



## REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122  
Para sa Tagalog, tumawag sa 408-586-3051  
Para español, llame 408-586-3232

### AGENDA

**TUESDAY, NOVEMBER 19, 2019**  
**CITY COUNCIL CHAMBERS, 455 E. CALAVERAS BLVD., MILPITAS, CA**  
**6:00 PM (CLOSED SESSION)**  
**7:00 PM (PUBLIC BUSINESS)**

**CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk**

### **ADJOURN TO CLOSED SESSION**

- a) **CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
Pursuant to California Government Code Section 54956.9(d)(2)  
One potential matter
- b) **PUBLIC EMPLOYMENT**  
Pursuant to California Government Code Section 54957  
Position: City Manager
- c) **CONFERENCE WITH LABOR NEGOTIATORS**  
Pursuant to California Government Code Section 54957.6  
Agency designated representatives: Christopher Diaz, City Attorney  
Unrepresented Employee: City Manager

**CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

### **PLEDGE OF ALLEGIANCE**

### **INVOCATION**

**PRESENTATION** Proclaim November as *Sikh American Awareness Month*

### **PUBLIC FORUM**

Those in the audience are invited to address City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit spoken remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

## **ANNOUNCEMENTS**

### **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

### **APPROVAL OF AGENDA**

#### **CONSENT CALENDAR**

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar.

**C1. Receive City Council Calendars of Meetings for November and December 2019 (Staff Contact: Mary Lavelle 408-586-3001)**

**C2. Approve City Council Meeting Minutes of November 5, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Approve draft City Council meeting minutes of the November 5 regular meeting.

**C3. Adopt a Resolution Authorizing Access To State Level and Federal Level Summary Criminal History Information for Employment, Certification, and Licensing Purposes (Staff Contact: Henry Kwong, 408-586-2419)**

Recommendation: Adopt a resolution authorizing access to state and federal level Summary Criminal History Information for employment, certification, and licensing purposes.

**C4. Adopt a Resolution Approving a Site Development Permit to develop a 5,807 square foot, one-story, single-family residence and certain accessory structures; and a Minor Site Development Permit to allow a portion of the Accessory Dwelling Unit in the front half of property, on a vacant 1.27-acre hillside lot at 898 Calaveras Ridge Drive (Staff Contact: Krishna Kumar, 408-586-3276)**

Recommendation: Adopt a resolution approving a Site Development Permit to develop a 5,807-square foot, one-story, single-family residence and certain accessory structures; and a Minor Site Development Permit to allow a portion of the ADU to be located within the front half of the property on a vacant 1.27-acre hillside lot at 898 Calaveras Ridge Drive.

**C5. Approve and Authorize the Interim City Manager to execute a Public Highway At-Grade Rail Crossing Agreement with Union Pacific Railroad Company for South Milpitas Boulevard rail crossing and signal improvements, and authorize payment to Union Pacific Railroad not to exceed \$750,000 for the cost of the improvements (Staff Contact: Steve Chan, 408-586-3324)**

Recommendation: Approve and authorize the Interim City Manager to execute a Public Highway At-Grade Rail Crossing Agreement with Union Pacific Railroad Company for South Milpitas Boulevard rail crossing and signal improvements and authorize payment to Union Pacific Railroad not to exceed \$750,000 for the cost of the improvements.

**C6. Review the FY 2019-20 Quarterly Financial Status Report for the Quarter Ending September 30, 2019 (Staff Contact: Walter C. Rossmann 408-586-3111)**

Recommendation: Review the FY 2019-20 Quarterly Financial Status Report for the quarter ending September 30, 2019.

**C7. Accept Additional FY 2019 Citizen Options for Public Safety (COPS) Grant funding and related Budget Amendment (Staff Contact: Jared Hernandez, 408-586-2406)**

Recommendation: Accept the additional FY 2019 COPS grant funding in the amount of \$63,658.27, approve the addition to the spending plan, and approve a budget amendment.

**C8. Consider Two Fee Waivers Requested by Kiwanis Club of Milpitas and Pragnya non-profit for a Total of \$2,200 (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Per request forms received by the City Clerk, move to waive the fees to rent the Milpitas Community Center Auditorium for the Kiwanis Club of Milpitas (\$1,200) and for the non-profit organization Pragnya (\$1,000).

**C9. Receive a follow up report from staff on the affordable housing requirements for a 40-unit residential condominium building located at 2001 Tarob Court (Staff Contact: Ned Thomas, 408-586-3273)**

Recommendation: Receive a follow up report from staff on the affordable housing requirements for a 40-unit residential condominium building located at 2001 Tarob Court.

**PUBLIC HEARINGS**

**10. Conduct a Public Hearing and Introduce Ordinance No. 38.839 Amending Milpitas Municipal Code Title XI (Zoning, Planning and Annexation), Chapter 10 (Zoning) Relating to Massage Establishments (Staff Contact: Rozalynne Thompson, 408-586-3278)**

Recommendations:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) City Attorney shall read aloud title of Ordinance No. 38.839.
- 3) Move to waive the first reading beyond the title and introduce Ordinance No. 38.839 amending Milpitas Municipal Code, Title XI (Zoning, Planning and Annexation), Chapter 10 (Zoning) relating to massage establishments.

**11. Re-open Public Hearing and Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and Allow a Limited Term for Deferral of Payment or Reduced Fee for Residential Projects (Staff Contact: Ned Thomas, 408-586-3272)**

Recommendations:

- 1) Re-open public hearing and move to close hearing following comments.
- 2) Adopt a Resolution authorizing the City Manager to adjust the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to establish a graduated fee program and the deferral of TADIF payments until occupancy, with these provisions in effect for 12 months from the date of adoption.

## **LEADERSHIP AND SUPPORT SERVICES**

- 12.** Approve Updated City of Milpitas Facility Use Manual (Staff Contacts: Renee Lorentzen, 408-586-3409 and Christopher Diaz, 408-586-3040)

Recommendation: Approve the Updated City of Milpitas Facility Use Manual.

- 13.** Provide Direction to Staff on Draft City Council Policies for Training and Events (Staff Contacts: Christopher Diaz, 408-586-3040 and Ashwini Kantak, 408-586-3053)

Recommendation: Provide direction to staff on draft City Council policies for training and events.

## **REPORTS OF MAYOR & COUNCILMEMBERS - from assigned Commissions, Committees and Agencies**

### **COMMISSION REPORTS**

- 14.** Approve the Milpitas Arts Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: Tegan McLane, 408-586-3212)

Recommendation: Approve the proposed Arts Commission Fiscal Year 2019-20 Work Plan.

- 15.** Approve the Library and Education Advisory Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: John Macon, 408-586-3226)

Recommendation: Approve the proposed Library and Education Advisory Commission Fiscal Year 2019-20 Work Plan.

- 16.** Approve the Milpitas Senior Advisory Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: John Macon, 408-586-3226)

Recommendation: Approve the proposed Senior Advisory Commission Fiscal Year 2019-20 Work Plan.

- 17.** Approve the Milpitas Community Advisory Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: Robert Musallam, 408-586-3275)

Recommendation: Receive and approve the proposed Community Advisory Commission Fiscal Year 2019-20 Work Plan.

- 18.** Approve the Milpitas Planning Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: Ned Thomas, 408-586-3273)

Recommendation: Approve the proposed Planning Commission Fiscal Year 2019-20 Work Plan.

### **NEXT AGENDA PREVIEW**

- 19.** Receive Preview List of Agenda Items for Next Regular City Council meeting on December 3, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

### **ADJOURNMENT**

**NEXT REGULAR CITY COUNCIL MEETING**  
**DECEMBER 3, 2019**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035  
e-mail: [cdiaz@ci.milpitas.ca.gov](mailto:cdiaz@ci.milpitas.ca.gov) / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on City website. City Council agendas and related materials can be viewed online [www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov) prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.*

October 2019						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

# Milpitas City Council Calendar

## November 2019

December 2019						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					<b>1</b>	<b>2</b> <b>12:00 PM</b> -Native American Flag Raising (Cesar Chavez Plaza)
<b>3</b>	<b>4</b> <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission	<b>5</b> <b>5:30 PM</b> -Closed Session <b>6:30 PM</b> -Milpitas Star Awardees Recognition <b>7:00 PM</b> -City Council	<b>6</b> <b>1:00 PM</b> -Santa Clara VTA Monthly Northeast Group (RT) <b>7:00 PM</b> -Community Advisory Commission (BN)	<b>7</b> <b>5:30 PM</b> -Santa Clara VTA Board of Directors (RT) <b>5:30 PM</b> -Milpitas Chamber of Commerce Board (CM)	<b>8</b> <b>4:00 PM</b> -City/School Collaborative Subcommittee (RT/CM)	<b>9</b>
<b>10</b>	<b>11</b>  <b>City Hall Closed in Observance of Veterans Day</b> <b>9:00 AM</b> -Veterans Day Ceremony @Veterans Plaza	<b>12</b> <b>3:00 PM</b> -City Council Housing Subcommittee <b>5:30 PM</b> -City Council Study Session @ Senior Center	<b>13</b> <b>6:00 PM</b> -Project Sentinel Drop-In Clinic <b>7:00 PM</b> -Planning Commission <b>7:00 PM</b> -Silicon Valley Clean Energy Board of Directors (CM) (Cupertino)	<b>14</b> <b>4:00 PM</b> -Santa Clara VTA Policy Advisory Committee (KD) <b>4:00 PM</b> -Treatment Plant Advisory Committee (CM) <b>7:00 PM</b> -Cities Association of Santa Clara Co. (CM) <b>7:00 PM</b> -Youth Advisory Commission (AP)	<b>15</b> <b>11:00 AM</b> -City Council Community Development Block Grant Subcommittee (KD/BN) <b>2:00 PM</b> -VTA Safety, Security, Transit Planning & Ops Committee (RT)	<b>16</b> <b>11:30 AM</b> -Veterans Appreciation luncheon @Senior Center
<b>17</b>	<b>18</b> <b>4:30 PM</b> -Economic Development and Trade Commission (KD) <b>7:00 PM</b> - Special Arts Commission (CM) <b>7:00 PM</b> -Science, Technology, and Innovation Commission (BN) <b>7:00 PM</b> -Library and Education Commission @Library (CM)	<b>19</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>20</b> <b>6:00 PM</b> -Energy and Environmental Sustainability Commission (BN)	<b>21</b> <b>1:00 PM</b> -Terrace Gardens Board of Directors (BN) <b>6:30 PM</b> -Bay Area Water Supply & Conservation Agency (CM) <b>7:00 PM</b> -Public Safety and Emergency Preparedness Commission (KD)	<b>22</b> <b>12:30 PM</b> -VTA Capital Program Committee (RT) <b>2:00 PM</b> -VTA Safety, Security, and Transit & Operations (RT) <b>?:00</b> -City Council Rules Subcommittee (RT/KD)	<b>23</b>
<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b> <b>29</b>  <b>City Hall Closed for Thanksgiving Holiday</b>		<b>30</b>





*\*Finance Subcommittee will meet only as needed*

November 2019						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

January 2020						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

# Milpitas City Council Calendar

## December 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>1</b>  <b>6:30 PM</b> Holiday Tree Lighting - Civic Center Plaza	<b>2</b> <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (AP)	<b>3</b> <b>7:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>4</b> <b>2:00 PM</b> -Santa Clara VTA - Northeast group (Sta Clara) (RT) <b>5:30 PM</b> -Veterans Commission (RT) <b>7:00 PM</b> -Community Advisory Commission (BN)	<b>5</b> <b>5:30 PM</b> -Milpitas Chamber of Commerce Board (CM) <b>5:30 PM</b> -Santa Clara VTA Board of Directors (RT)	<b>6</b> <b>7:00 PM</b> -City Council Rules Subcommittee (RT/KD)	<b>7</b>  <b>10:00 AM</b> Milk & Cookies w/Santa@ Community Center
<b>8</b>	<b>9</b>	<b>10</b> <b>7:00 PM</b> -City Council special meeting	<b>11</b> <b>7:00 PM</b> -Silicon Valley Clean Energy Board of Directors (CM) (Cupertino) <b>7:00 PM</b> -Planning Commission	<b>12</b> <b>4:00 PM</b> -Treatment Plant Advisory Committee-S. Jose (CM) <b>4:00 PM</b> -Santa Clara VTA Policy Advisory Committee (KD) <b>7:00 PM</b> -Youth Advisory Commission (AP) <b>7:00 PM</b> -Cities Assoc of SCC (CM)	<b>13</b> <b>*4:30 PM</b> -City Council Finance Subcommittee (RT/CM)	<b>14</b>
<b>15</b>	<b>16</b> <b>7:00 PM</b> -Science, Technology, and Innovation Commission (BN)	<b>17</b> <b>7:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>18</b> <b>6:00 PM</b> -Energy and Environmental Sustainability Commission (BN)	<b>19</b>	<b>20</b>	<b>21</b>
<b>22</b>	<b>23</b>	<b>24</b> <b>CHRISTMAS EVE + CHRISTMAS DAY Holidays</b> <b>City Hall closed for Holiday</b> 		<b>26</b> <b>City Hall Closed</b> 	<b>27</b>	<b>28</b>
<b>29</b>	<b>30</b>	<b>31</b>				

*\*Finance Subcommittee will meet only as needed*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Joint Meeting of the Milpitas City Council  
and Milpitas Housing Authority**  
**Date:** **Tuesday, November 5, 2019**  
**Time:** **5:30 PM Closed Session  
7:00 PM Open Session**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**CALL TO ORDER** Mayor Tran called the joint meeting to order at 5:30 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Dominguez and Councilmember Nuñez

**ABSENT:** Councilmembers Montano and Phan were absent at roll call and arrived in closed session.

**CLOSED SESSION** City Council convened in Closed Session to discuss one matter listed on the agenda.

City Council convened at the dais for the Open Session regular agenda at 7:03 PM.

**ANNOUNCEMENT** City Attorney Chris Diaz stated there was no reportable action by the City Council, out of Closed Session.

**PLEDGE** Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION** Vice Mayor Dominguez welcomed Rahesh Shah from the BAPS community, who then provided the invocation to start the meeting.

**PRESENTATIONS** Mayor Tran welcomed the Community Advisory Commission Chair Van Lan Truong, and she presented the Neighborhood Beautification Awards to the property award winners

Mayor and Council honored the City of Milpitas employee Milpitas “Star” Awardees, recently presented to teams of Milpitas employees for specific team-oriented projects.

**PUBLIC FORUM** Bob Livengood, resident of S. Main Street in Milpitas, invited all to a “Salute to Milpitas Veterans” on Sunday, November 10 at the Milpitas Charity Bingo starting at 7:00 PM. After five weeks in operation, Milpitas Charity Bingo had distributed more than \$30,000 to non-profits in the community with proceeds from the bingo charity. Volunteers worked very hard at the facility. He thanked City Council for approving it and for supporting the efforts in the community.

Robert Marini, resident, attended a census meeting recently and asked about how data was collected for household numbers. He referred to a comment he’d read in an email from one Council- member. He felt the city was not transparent about fees, and wanted further explanation.

Voltaire Montemayor, resident, would like someone to sing the Star Spangled Banner once in a while. He appreciated homes that beautified the city.

**ANNOUNCEMENTS** Vice Mayor Dominguez asked the City Attorney to reach out to Mr. Marini, regarding a question he had about the census since he’d staff to help him get his question answered. She thanked all the three Councilmembers for establishing a true team, that took care of the city, and for service,

working together. She thanked the Mayor for his service, while away with military fighting fires north of the City of Milpitas.

Councilmember Montano thanked Milpitas firefighters when they fought recent serious fires in Milpitas, including the emergency response on her cell phone which was very helpful.

Councilmember Nuñez honored and thanked Public Information Officer Jennifer Yamaguma for all her efforts to keep the residents, Council, and everyone informed about the fire and other information during the previous weekend.

#### **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

#### **APPROVAL OF AGENDA**

Motion: to approve the City Council agenda

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 5  
NOES: 0

#### **CONSENT CALENDAR**

Motion: to approve the consent calendar including agenda items no. C2 – C14, with the exception of no. 12

Mayor Tran requested item 12 (report on water main repair) be removed from consent.

Councilmember Nuñez asked to remove item C1 from consent. He also had questions and comments on some consent items, that would remain on consent.

On item no. 3 (updated Fire Code), he wanted to know what the changes were explicitly, and if that could be presented at the next meeting. The City Manager said yes.

On item no. 9 (agreement for consulting services for Engineering), he was concerned that it was almost a 100% increase, and wanted to know if there was a valid reason for that. The City Manager responded it was for required work on the well upgrade and pedestrian bridge crossing projects.

On item no. 13 (fee waiver for a non-profit group), he remarked that there were lots of car washes around town. He asked if this would be coming to Council frequently or was this the first one. City Manager replied it was the first one. The City Council may consider adjusting the special event fee, with concerns about car wash regulations. There would be an education component for the public also.

Mayor Tran wanted to discuss the items removed from consent first, prior to the remainder of the regular agenda.

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

Regarding agenda item no. 1, Councilmember Nuñez made comments and remarks on several of the scheduled meetings on the November and December calendars, noted for staff and his Council colleagues. Councilmember Montano joined him in expression of desire to have on the agenda a place for members to report out of committees and bodies on which they serve.

#### **1. Council Calendars**

Received City Council calendar for November 2019.

C2. Meeting Minutes	Approved City Council meeting minutes of October 8 and 15, 2019.
C3. Ordinance No. 113.25	Waived the first reading and introduced Ordinance No. 113.25, to be enacted as Chapter 300, Title V of the Milpitas Municipal Code. Set a public hearing for Tuesday, December 3, 2019 at 7:00 p.m. in the Milpitas City Council Chambers to consider adoption of Ordinance No. 113.25, adopting by reference, with certain local amendments, the 2019 Edition of the California Fire Code.
C4. Ordinance No. 65.147	Waived the first reading and introduced Ordinance No. 65.147 amending Chapters 1, 3, 3.5, 4, 5, 6, 7, 10, 13, 14, 150, and 170 of Title II of the Milpitas Municipal Code relating to Code Administration; adopting by reference the 2019 California Building Code, 2019 California Residential Code, 2018 International Property Maintenance Code, 2019 California Mechanical Code, 2019 California Electrical Code, 2019 California Plumbing Code, 2018 International Swimming Pool and Spa Code, 2019 California Existing Building Code, and 2019 California Historical Building Code, with amendments; and amending regulations pertaining to grading, excavation, paving, and erosion control, and gas shut-off devices. Also set a public hearing date on December 3, 2019, pursuant to California Government Code Section 50022.3, for adoption of the Ordinance.
C5. Ordinance No.38.837	Waived the second reading and adopted Ordinance No. 38.837 amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 5, 7, and 56 relating to assembly and other non-industrial Uses in the M2 Heavy Industrial Zoning District.
C6. Resolution	Adopted Resolution No. 8919 (1) granting acceptance of public improvements for the Waterstone Subdivision at 1494 California Circle, Tract 10270, Public Improvement Plan No. 2-1193; (2) approving a reduction in the faithful performance bond to \$190,000, which shall be subject to and in effect for the duration of a one-year warranty period; and (3) granting authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.
C7. Resolution	Adopted Resolution No. 8920 (1) granting acceptance of public improvements for the Coyote Creek Townhomes Subdivision at 601 Murphy Ranch Road, Tract 10087, Public Improvement Plan No. 2-1151; (2) approving a reduction in the faithful performance bond to \$30,000, which shall be subject to and in effect for the duration of a one-year warranty period; and (3) granting authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.
C8. BAAQMD Grant	Approved funding agreement between the Bay Area Air Quality Management District and the City of Milpitas to receive grant funds in the amount of \$32,000 for Electric Vehicle Charging Stations at City Hall and Public Works Building.
C9. Amendment No. 1 – David J. Powers & Assoc.	Approved and authorized the Interim City Manager to execute Amendment No. 1 to the Professional Services Agreement with David J. Powers & Associates related to CIP Projects No. 7076 and No. 2005 to increase compensation by \$55,000, for a total agreement in the amount of \$123,843.
C10. Public Art Design	Per recommendation of the Milpitas Arts Commission, approved James Dinh's Circle of Time Public Art design for Higuera Adobe Park.
C11. Bulletproof Vest Partnership Grant	Accepted the 2019 Bulletproof Vest Partnership Grant and approved a budget appropriation for \$18,546.07 into the Milpitas Police Department's operating budget.
12. Water Main repair	Mayor Tran had removed this item from consent to have a report from the Public Works Director about work done on a significant repair of a large water main on Abel Street. Mr. Tony Ndah reported on staff effort working 27 hours straight to get the water main and the street back in service.

City Council received a report from the Public Works Director on the emergency repair work on a water main on Abel Street, and authorized the City Manager to execute contracts with Preston Pipeline and Joseph J. Albanese, respectively, for emergency repair of the Abel St. Water Main.

- C13. Fee Waiver Per request form received by the City Clerk, waived \$932.63 for the Special Event Permit fee and automation fee identified by City Planning staff for Greater Love Church of God in Christ for its car wash fundraising events in October, benefitting those in need in Milpitas with food and clothing.
- C14. 2020 Council Meeting Schedule Approved the 2020 Milpitas City Council meeting schedule, including cancelation of both July and first August meeting dates next year.
- C15. Reappoint One Commissioner Re-appointed Mercedes Albana to her current term of three years on the Public Safety and Emergency Services Commission in a term that will expire in June of 2020.
- C16. Code of Conduct Adopted a City Council Code of Conduct.

### **PUBLIC HEARING**

- 17. Robson Homes project at 1005 N. Park Victoria Drive** Planning Director Ned Thomas introduced Planner Adrienne Smith who provided a report of the request for a new residential subdivision by Robson Homes at 1005 N. Park Victoria Drive. There were five specific actions requested for this project, which were recommended by the Milpitas Planning Commission. The project as designed would include ten Accessory Dwelling Units (ADUs) within the 36 single family homes on a 4.88 acre site.

Ms. Smith detailed the affordable housing requirement for the project along with findings for an exception to the City's affordable housing ordinance, which mandated 15% units to be affordable. Staff provided findings that the ADUs included help to meet the need in the city.

Applicant Mr. Mark Robson addressed the City Council with a brief. He spoke of the importance of housing in the Bay Area and neighborhood compatibility. ADUs were added as an affordable element to the new homes project his company would bring to a long empty parcel of land. He held several meetings with community members to respond to their concerns, including those about parking and traffic. He detailed financial benefits that totaled \$5.6 million, including a \$200,000 donation to Milpitas Unified School District.

Next, Mayor Tran opened the public hearing.

A woman neighbor was worried about needing a second kitchen in a home in order to have an income property on the second floor, and make it more uniform. She wanted to know if she was allowed to have a second kitchen at her home, as she had been denied by the City when she submitted in the past. She felt it was too many housing units.

Huascar Castro, from Silicon Valley at Home, was fully supportive of this project, including the ADUs as a new innovative solution to providing multiple affordable units of housing. He was encouraged that Robson would build ten ADUs from the start.

A woman resident from across the street felt the number of units was too much and would create more traffic, congestion and safety issues. She opposed it.

Cheryl Jordan, MUSD Superintendent, noted that in addition to \$200,000 donation to the schools, Mr. Robson had also noted that the ADUs when ready, could be made available to teachers as a place to live, so that was great for educators.

Resident Mr. Phan, who lived south of the project, invited all Councilmembers to stop by the neighborhood and see the parking problems that would come with these houses getting built. Second story ADUs would be an eyesore.

Voltaire Montemayor, resident, said this was a very nice spot in Milpitas. He supported building, but not sure the plan was perfect while he would support it.

A man resident, neighbor, remarked that more than one comment had been submitted despite what he wrote. Many people signed a letter/petition. A smaller document would be in order, more than 600 pages to read and review on this project. He opposed the project and asked not to approve zoning changes. He submitted some papers to the City Clerk.

A man James, a neighbor, complimented Mr. Robson and Robson Homes. Original plan was to build just 24 homes in low density residential and only built 26 houses across the street. He felt the new project was going backwards since parking would be a real problem and traffic.

A woman resident who lived across the street since 2005 was not against Robson and welcomed a new development. She was strongly against the zoning change.

A woman neighbor made remarks about parking and the extra units wondering how long it would take to build those.

Mayor Tran invited Mr. Robson back to the podium to answer questions posed by the speakers.

The City Attorney recommended the Council ask the developer any questions they had following his comments.

Mayor Tran asked about parking per house, which was two. Robson's HOA would require that homeowners park cars in the garage. The Mayor asked about the bike lane and landscape set back. Developer described the wider street and no reduction in parking on the city street.

Councilmember Montano asked about the tot lot and if it was opened to the rest of the neighborhood, and Mr. Robson replied yes. She heard the concerns about traffic and asked about a stop sign at Creed St. at N. Park Victoria Drive.

Motion: to close the public hearing, following 11 speakers

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

Councilmember Nuñez asked questions to staff and wanted to know more about the zone change requested and how it affected the General Plan update. Mr. Thomas responded. Mr. Nuñez asked about the payment in lieu of affordable housing fee offered by the developer to pay. He asked how long the extra process for "duet" homes would take (alternative in staff report), and Mr. Thomas said a minimum of three months. Mr. Nuñez favored the alternative for the developer to build some duet homes to add more housing to the City.

Mayor Tran commented further on this view of what may be the last single family home development, according to the developer.

Councilmember Montano liked the project including the ADUs and it exceeded parking requirements. It was a high quality design she felt.

Councilmember Phan appreciated Mr. Robson and his spirit of collaboration. Vote would not be difficult for him and he was glad for the amount of community input the developer sought out. This project added to a diverse housing stock

Councilmember Nuñez was ready to make a motion.

The City Attorney described what action Council could take to have the project come back to City Council with the alternative that staff offered (to add/include duet units for more affordable

housing on this site). Council and staff wanted to honor the effort made by the developer to work with the MUSD. Mr. Diaz recommended the project and actions to return to Council with the revised environmental documents.

The City Attorney asked developer Mr. Robson for his concurrence to proceed with the alternative for the duets.

Motion: to defer approval of this project, directing staff and developer to go back and pursue steps needed for the alternative project design that would include building some “duet” (duplex housing) units to add to the total number of housing units built at 1005 N. Park Victoria Drive, with new CEQA documents and to proceed in rapid time frame return to Planning Commission and City Council

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## **COMMUNITY DEVELOPMENT**

### **18. Measure B Funding Agreement**

Transportation Engineer Steve Chan presented background on Measure B from the 2016 election, which was the ½ cent sales tax to fund transportation projects. City’s priority was for projects on Highway 237/Calaveras Blvd. He described three improvement projects to be funded with \$1.8 million of Measure B funding and the City was required to fund 10% of the costs.

Councilmember Montano commented on the long time bottlenecking problem on 237 near McCarthy Ranch off-ramp. She wondered why the state was not in charge, instead of VTA.

Motion: to authorize the City Manager to execute a Funding Agreement between the City and the Santa Clara Valley Transportation Authority for 2016 Measure B State Route 237 near term improvements project.

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

### **19. Calif. Energy and Green Building Standards Codes**

Building Safety & Housing Director Sharon Goei alongside Building Official Bill Tott brought the energy and green codes to Council. She explained what was required by state law, for updated codes every three years. Ms. Goei described local amendments that were proposed to the new statewide building and related codes.

Mr. Tott noted one consultant was present working with Silicon Valley Clean Energy on the green building standards codes regarding energy. He defined and explained new “Reach” codes for the State of California. This included incorporating processes to add more electric vehicle charging stations.

Mayor Tran wanted to know how Milpitas compared to neighboring cities on energy and climate protection action. Mr. Tott showed a “Regional Efforts” slide.

Councilmember Montano asked when Council would be reviewing the Climate Action Plan, and Mr. Tott said it would be updated in 2020.

Ms. Montano inquired if PG&E had ongoing shut-downs, and City was urging all-electric vehicles, how did that figure into the codes. She asked about putting solar panels on city buildings and staff replied that research on that was underway.

Councilmember Nuñez asked Mr. Tott additional questions about saving energy, and saving funds. The cost of going green was expensive, he pointed out. Some of those costs some people could not afford. All needed to find a way to shrink the city's footprint, in whatever way worked for City of Milpitas.

These actions would be for new construction only, Mr. Tott confirmed.

Mayor Tran referred to regional efforts and wanted to make sure Milpitas was the top small city for green efforts. He wanted to move forward to ban natural gas in new development too. He felt this would be safer for all residents and for the environment too.

Vice Mayor Dominguez wanted to move forward on saving the environment. This city followed San Jose on the Reach codes and those would evolve.

Councilmember Phan supported moving forward to ban natural gas as the Mayor suggested.

Councilmember Nuñez inquired about Silicon Valley Clean Energy (SVCE) and what it thought about those changes. He also wanted to ask the Fire Chief his opinion.

Councilmember Montano served on the Board of (SVCE) and said the agency goal was to go to all electric (no gas use). Maybe this could be gradual.

Vice Mayor Dominguez agreed with Councilmembers Montano and Nuñez with concern to go gradual on moving from gas to all electric.

Mayor Tran clarified that these rules would be impacting new construction of homes, not apply to existing homeowners and staff confirmed that.

Councilmember Nuñez wanted to support the Mayor with a bold statement, but did not want to cost the city, liability-wise. The City would need to have a plan to move to all-electric by banning gas in new construction. If moving toward owning the power lines (via SVCE), then do so with eyes open.

City Manager McHarris commented that what staff presented was a great step to become efficient and good to have goals on reducing gas, with concern for the costs to homeowners and builders.

Mayor Tran said he still was in favor of moving to ban gas (like City of Berkeley did), but was willing to go at pace of City Council recommendation.

Councilmember Phan wanted an outline more of specific goals, in a Resolution with intentions getting formalized in that document.

Staff commented further on actions that could be needed to get toward gas-free, all electric.

Next, Mayor Tran invited speakers to the podium.

A representative of Summerhill Construction had worked on pre-construction and had a good understanding of the Reach Codes. He wanted Council to understand these codes would affect any projects that had been approved but not yet built. He was working with cities all around the Bay on the unintended consequences. He appreciated an option for mixed-fuel buildings.

A woman named Rose of Silicon Valley expressed strong support for all electric codes for new residential construction. She addressed what other cities were doing or have voted on. She spoke of resiliency solutions.

Councilmember Montano was for going all electric, but it should be gradual for consumers and builders.

Resident Voltaire Montemayor was in line with fossil fuels, mentioned gas pipes.

Next, City Attorney Chris Diaz read aloud title of Ordinance No. 65.148, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 11 of Title II of the Milpitas Municipal Code Adopting by Reference the 2019 California Energy Code with Amendments.”

(1) Motion: to waive the first reading beyond the title and introduce Ordinance No. 65.148 amending Chapter 11 of Title II of the Milpitas Municipal Code adopting by reference the 2019 California Energy Code with amendments

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

Next, the City Attorney read aloud the title of Ordinance No. 65.149, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 19 of Title II of the Milpitas Municipal Code Adopting by Reference the 2019 California Green Building Standards with Amendments.”

(2) Motion: to waive the first reading beyond the title and introduce Ordinance No. 65.149 amending Chapter 19 of Title II of the Milpitas Municipal Code adopting by reference the 2019 California Green Building Standards Code with amendments

Motion/Second: Councilmember Phan/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

(3) Motion: to set the public hearing date on Tuesday December 3, 2019, pursuant to California Government Code Section 50022.3, for adoption of the two Ordinances (noted above)

Motion/Second: Councilmember Phan/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 5  
NOES: 0

## **20. HOUSING AUTHORITY**

### **Resolution to Adopt Bylaws**

Councilmember Nuñez explained that this recommendation came out from the City Council Housing Subcommittee. The members wanted to have separate meetings of the Milpitas Housing Authority and wanted to have all members of the Council present to discuss the housing topics. He did not volunteer to serve as the Chair.

Mayor Tran appreciated efforts to advocate for more housing. He was trying to understand the role of Subcommittee and a separate Housing Authority, when all five Councilmembers would meet (as currently). He asked if the Council was trying to do something that already exists.

Councilmember Nuñez wanted to define what this body does or could do, such as own property.

City Attorney Diaz responded to the Councilmembers on legally what could be done, and actions taken as the present Housing Authority body composed of all five Councilmembers.

Mayor Tran expressed his reservations.

Councilmember Montano what was discussed recently at Housing Subcommittee.

The City Council chose to take no action on the recommendation for adoption of Bylaws and elect officers. This topic would roll this over to the next meeting, said Councilmember Montano.

Councilmember Phan found it was helpful for all, to meet like the retreats meeting with clearly defined what the exact expectations are. Define what those bylaws are, maybe have a retreat meeting on this topic rather than a study session. Include brainstorming if possible. For him, it did not make a difference on the leadership positions of the Housing Authority. The would need to define what the Housing Authority could do. The Vice Mayor agreed with Mr. Phan.

No action was taken to adopt a Housing Authority resolution in order to adopt new bylaws for the City of Milpitas Housing Authority nor select any officers.

Vice Mayor Dominguez asked for a retreat sooner than later on agenda items no. 20 (Housing Authority) and no. 21 (Rules Subcommittee).

Mayor Tran asked staff to send out a memo to the City Council about the Housing Authority purpose, goals, etc. Councilmember Montano asked to include what do other cities have or do with these agencies.

The City Manager responded on what he heard the Council wanted to do: to meet in a study session/retreat format on the Housing Authority, and on the Rules Subcommittee topics, soon. He recommended a daytime schedule for such meeting.

### **LEADERSHIP**

#### **21. Clarification – Rules Subcommittee**

This agenda report was not heard, and could be moved or discussed at a special meeting date.

### **REPORTS**

Items No. 22, 23 and 24 regarding 3 City Commission work plans were not heard.

### **NEXT AGENDA**

#### **25. Preview next agenda**

Noted receipt of list of agenda items for the November 19, 2019 City Council meeting.

### **ADJOURNMENT**

Mayor Tran adjourned the joint meeting at 11:18 PM.

*Meeting minutes respectfully drafted and submitted by  
Mary Lavelle, City Clerk*



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution Authorizing Access To State Level and Federal Level Summary Criminal History Information for Employment, Certification, and Licensing Purposes (Staff Contact: Henry Kwong, 408-586-2419)</b>
<b>Category:</b>	Consent Calendar-Public Safety
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Henry Kwong, Milpitas Police Captain, 408-586-2419
<b>Recommendation:</b>	Adopt a Resolution authorizing access to State Level and Federal Level Summary Criminal History Information for Employment, Certification, and Licensing Purposes.

### **Background:**

The Milpitas Police Department currently conducts background checks in order to fulfill its employment, certification, and licensing duties for volunteers, contractors, applicants, and employees of the City of Milpitas. State level summary criminal history information is obtained from the California Department of Justice, and depending on the purpose of the background check, federal level summary criminal history information is also obtained from the Federal Bureau of Investigation. In order to standardize the thoroughness of background checks, the Milpitas Police Department will start obtaining federal level summary criminal history information in conducting every background check for employment, certification, and licensing purposes. On June 11, 2019, the City Council adopted Resolution No. 8884 intended to authorize the Milpitas Police Department to obtain both state level and federal level summary criminal history information, and it was accepted by the California Department of Justice. When the resolution was forwarded to the FBI Criminal Justice Information Law Unit, changes were requested to clarify the purposes and the recipient of the information.

### **Analysis:**

California Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint power authorities to access state and local summary criminal history information for employment, licensing, or certification purposes. California Penal Code Section 11105(b)(11) authorizes cities, counties, districts, and joint power authorities to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation. California Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record. California Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county, or district, or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

In accordance with Penal Code Sections 11105(b)(11) and 13300(b)(11), the proposed resolution will authorize the Milpitas Police Department access to both state and federal criminal history information for all background checks pertaining to employment, certification, and licensing purposes.

### **Policy Alternative:**

**Alternative:** Do not adopt the resolution to obtain federal level summary criminal history information in all background checks.

Pros: (None)

Cons: Incomplete background checks

Reason not recommended: Potentially disqualifying information from the federal level summary criminal history may be omitted from the background checks.

**Fiscal Impact:**

The federal level summary criminal history information will cost \$17 for each inquiry, and the total annual cost should not exceed \$1000. The cost can be absorbed in the police department's existing operational budget.

**California Environmental Quality Act:** N/A.

**Recommendation:**

Adopt a Resolution authorizing access to state and federal level Summary Criminal History Information for employment, certification and licensing purposes.

**Attachment:**

Resolution for adoption  
Copy of Resolution No. 8884

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING ACCESS TO  
STATE LEVEL AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR  
EMPLOYMENT, CERTIFICATION, AND LICENSING PURPOSES**

**WHEREAS**, the Milpitas Police Department currently conducts background checks in order to fulfill its employment, certification, and licensing duties for volunteers, contractors, applicants, and employees of the City of Milpitas; and

**WHEREAS**, California Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and

**WHEREAS**, California Penal Code Section 11105(b)(11) authorizes cities, counties, districts, and joint powers authorities to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

**WHEREAS**, California Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

**WHEREAS**, California Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county, or district, or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas Police Department is hereby authorized to access state level and federal level summary criminal history information for employment (including volunteers and contract employees), certification, and licensing (including owners, managers, supervisors, and employees of massage businesses and bingo establishments) purposes and may not disseminate the information to a private entity.
3. The City Council in adopting this resolution, hereby rescinds Resolution No. 8884.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

**RESOLUTION NO. 8884**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING ACCESS TO STATE LEVEL AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR EMPLOYMENT, CERTIFICATION, AND LICENSING PURPOSES**

**WHEREAS**, the Milpitas Police Department currently conducts background checks in order to fulfill its employment, certification, and licensing duties for volunteers, contractors, applicants, and employees of the City of Milpitas; and

**WHEREAS**, California Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and

**WHEREAS**, California Penal Code Section 11105(b)(11) authorizes cities, counties, districts, and joint powers authorities to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

**WHEREAS**, California Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

**WHEREAS**, California Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county, or district, or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas is hereby authorized to access state level and federal level summary criminal history information for employment (including volunteers and contract employees, and contractors), licensing (including owners, managers, supervisors, and employees of massage businesses and bingo establishments), and certification (including security checks) purposes and may not disseminate the information to a private entity.

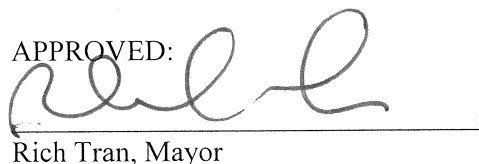
PASSED AND ADOPTED this 11<sup>th</sup> day of June 2019, by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Dominguez, Councilmembers Montano, Nuñez, and Phan  
NOES: (0) None  
ABSENT: (0) None  
ABSTAIN: (0) None

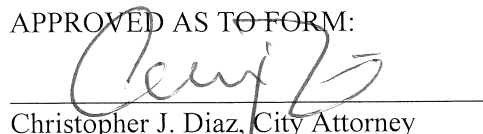
ATTEST:

  
Mary Lavelle, City Clerk

APPROVED:

  
Rich Tran, Mayor

APPROVED AS TO FORM:

  
Christopher J. Diaz, City Attorney



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution Approving a Site Development Permit to develop a 5,807-square foot, one-story, single-family residence and certain accessory structures; and a Minor Site Development Permit to allow a portion of the ADU to be located within the front half of the property, on a vacant 1.27-acre hillside lot at 898 Calaveras Ridge Drive (Staff Contact: Krishna Kumar, 408-586-3276)</b>
<b>Category:</b>	Consent Calendar-Community Development
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Krishna Kumar, 408-586-3276
<b><u>Recommendation:</u></b>	Adopt a resolution approving a Site Development Permit to develop a 5,807-square foot, one-story, single-family residence and certain accessory structures; and a Minor Site Development Permit to allow a portion of the ADU to be located within the front half of the property on a vacant 1.27-acre hillside lot at 898 Calaveras Ridge Drive.

### **Background:**

On September 1, 1981, the City Council approved Planned Unit Development (PUD) No. 23A (now known as PUD No. 23.5 or Calaveras Ridge Estates) and the Tentative Map for a 17-lot hillside residential subdivision on approximately 40 undeveloped acres. The subject site is identified as Lot 4, Tract No. 7328 Calaveras Ridge Estates (APN: 029-06-028) on County records.

The proposed project includes a Site Development Permit for the following:

1. Develop a 5,807-square-foot, one-story single-family residence and a detached 1,195-square foot accessory dwelling unit (ADU), cabana, and an open wood deck platform in the rear yard of a vacant 1.27-acre hillside lot within the Calaveras Ridge Estates neighborhood.
2. Allow an ornamental metal fence along the street frontage where a wood fence is typically required.

The project also includes a Minor Site Development Permit to allow a portion of the ADU to be located within the front half of the property to minimize grading on a vacant hillside lot.

The original Site Development Permit application also included a request to allow an internal wall and entrance gate up to nine feet in height. However, upon further analysis, staff determined that these features may be considered an architectural extension of the residence and do not require separate discretionary review.

Due to the project's location within the Hillside Combining District ("H") (Milpitas Municipal Code Section XI-10-45.09), the application must be considered by both the Planning Commission and the City Council for conformance with the Hillside Site and Architectural Guidelines. The Planning Commission held a public hearing on October 9, 2019 to review the project application, and a motion to approve the proposed project resulted in a tie vote (3-3, Mandal absent). Thus, the project will be considered by the City Council without a recommendation from the Planning Commission. Those commissioners who did not support the project questioned the design of the building and whether it was going to be used strictly as a single-family residence. The proposed structure has a very large living room with a shower and office on one side and box lighting that is not typical for this type of room. In addition, the living room is largely separated from the rest of the home rather than located as a central gathering space.

**Analysis:****General Plan and Zoning Ordinance**

The proposed Site Development Permit and Minor Site Development Permit are both consistent with the Milpitas General Plan and Zoning Ordinance. The Planning Commission Staff Report (Attachment B) provides detailed analysis of the proposed project.

**Hillside Ordinance**

The proposed project is consistent with the development standards of the City's Hillside Ordinance in terms of architectural design and grading in a hillside setting. The Planning Commission Staff Report (Attachment B) provides detailed analysis of compatibility with the hillside regulations.

Pursuant to MMC Section XI-10-54.10(D)(2), all fence posts and supporting framework within the Hillside Combining District shall be wood in order to maintain the rural character of the hills. The proposed project includes an ornamental metal fence along the street frontage, which requires approval of a Minor Site Development Permit. Staff recommends approval because the proposed fence is compatible with existing fences in the neighborhood.

**Architectural Design**

Due to concerns with the size and layout of the living room within the proposed project which may suggest a possible assembly use, the conditions of approval include the following restrictions:

1. Use of the property shall be strictly limited to a single-family residence with one accessory dwelling unit.
2. No portion of the property shall be converted or used for any purpose other than its allowed use as a single-family residence. No portion of the single-family residence shall be used as a Place of Assembly or for Commercial Education or Training, Recreation or Entertainment Facilities, or similar uses.

**Policy Alternative:**

**Alternative:** Deny the Site Development Permit to allow development of a new approximately 5,807-square foot single-family residence and a detached 1,195-square foot accessory dwelling unit (ADU) in the rear yard.

**Pros:** None

**Cons:** The project site would remain vacant, and the applicant may abandon the project or sell the property. The applicant would incur additional costs if he opts to submit new or revised plans.

**Reasons not recommended:** The proposed residence and ADU would be located on an existing subdivision lot intended for the proposed purpose, and the project would be compatible with the surrounding neighborhood. As proposed, the project is consistent with the General Plan, Zoning Ordinance, and all required Findings.

**Fiscal Impact:**

No fiscal impact.

**Environmental Review:**

The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303(a) (New Construction or Conversion of Small Structures) and Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning).

**Recommendation:**

Adopt a resolution approving a Site Development Permit to develop a 5,807-square foot, one-story, single-family residence, and certain accessory structures; and a Minor Site Development Permit to allow a portion of the ADU to be located within the front half of the property on a vacant 1.27-acre hillside lot at 898 Calaveras Ridge Drive.

**Attachments:**

- A. Resolution
- B. Planning Commission Staff Report - 10/09/2019
- C. Project Plans
- D. Story Pole Photographs and View Point Study
- E. Grading Requirement in Hillside Zones

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD18-0016 TO DEVELOP A NEW 5,807 SQUARE FOOT, ONE-STORY, SINGLE-FAMILY RESIDENCE, WITH AN ORNAMENTAL METAL FENCE AT THE FRONT OF THE PROPERTY AND A DETACHED 1,195-SQUARE FOOT ACCESSORY STRUCTURE (ADU), CABANA, AND AN OPEN WOOD DECK PLATFORM IN THE REAR YARD; AND MINOR SITE DEVELOPMENT PERMIT NO. P-MS19-0174 TO ALLOW A PORTION OF THE ADU TO BE LOCATED WITHIN THE FRONT HALF OF THE PROJECT SITE, A VACANT 1.27-ACRE HILLSIDE LOT LOCATED WITHIN PLANNED UNIT DEVELOPMENT NO. 23.5 AND ZONED R1-H SINGLE-FAMILY RESIDENTIAL HILLSIDE COMBINING DISTRICT WITH A SITE AND ARCHITECTURAL (-S) OVERLAY, AT 898 CALAVERAS RIDGE ROAD, AND MAKING FINDINGS OF CEQA EXEMPTION**

**WHEREAS**, on September 1, 1981, the Milpitas City Council approved Planned Unit Development No. 23.5 (Calaveras Ridge) to allow the development of Residential PUD No. 23.5 and the Tentative Map for a 17-lot hillside residential subdivision; and

**WHEREAS**, on November 9, 2018, Kevin Chiang submitted an application to develop a new 5,807-square foot, one-story, single-family residence, with an ornamental metal fence at the front of the property and a detached 1, 195-square foot accessory dwelling unit (ADU), cabana, and an open wood deck platform in the rear yard; and a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be situated within the front half of the project site, on a vacant 1.27-acre hillside lot located within Planned Unit Development No. 23.5 at 898 Calaveras Ridge Road (APN: 029-06-038) The Project site is zoned R1-H Single Family Residential Hillside Combining District with a Site and Architectural (-S) Overlay; and

**WHEREAS**, Planned Unit Development No. 23.5 (“PUD No. 23.5”) is located within the Single-Family Residential (R1-H) Hillside Combining District; and

**WHEREAS**, a Site Development Permit (Permit No. P-SD18-0016) and a Minor Site Development Permit (Permit No. P-MS19-0174) are required to develop a new 5,807-square foot, one-story, single-family residence, with an ornamental metal fence at the front of the property, and to allow a portion of the accessory dwelling unit to be situated within the front half of the property (“Project”); and

**WHEREAS**, the Planning Department determined that the Project is categorically exempt from further environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section 15303 (New Construction and Conversion of Small Structures) and; on a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and

**WHEREAS**, on October 9, 2019, the Planning Commission held a duly-noticed public hearing to consider the Project, and a motion to recommend approval of Site Development Permit (P-SD18-0016) and Minor Site Development Permit (P-MS19-0174) to the City Council resulted in a tie vote (3-3, Mandal absent), and the Project moved forward to the City Council with no recommendation from the Planing Commission; and

**WHEREAS**, on November 19, 2019, the City Council held a duly-noticed public hearing, at which time all those in attendance were given the opportunity to speak on the Project; and

**WHEREAS**, the City Council considered all of the written and oral testimony presented at the public hearing in making its decision.

**NOW THEREFORE**, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

**SECTION 1. Recitals.** The City Council has considered the full record before it, which may include, but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals and findings set forth herein are found to be true and correct and incorporated herein by reference.

**SECTION 2. Record.** The location and custodian of the documents or other material which constitute the record of proceedings upon which this decision is based is within the Planning Department, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.

**SECTION 3. CEQA.** The Project is categorically exempt from further environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section 15303 (New Construction and Conversion of Small Structures) and; on a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

**SECTION 4. FINDINGS.** In accordance with Section XI-10-57.03(F)(1) of the Zoning Code, the City Council makes the following required findings based on the evidence in the public record in support of Site Development Permit No. SD18-0016:

- 1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

As described within the staff report, the architectural design and site planning of the proposed home is aesthetically compatible with the neighboring homes with an emphasis of minimizing changes to the natural topography. The proposed single-family residence and accessory dwelling unit incorporate earth-tone colors and are sited and designed in a manner that does not draw attention when viewed from the valley floor.

- 2. The project is consistent with the Milpitas Zoning Ordinance in that:*

As described within the staff report, the proposed home meets the development standards in the R1-H Single-Family Residential-Hillside Zoning District and PUD No. 23.5 (Calaveras Ridge) for setbacks, height requirements, and landscaping. Staff supports the applicant’s request for a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be located within the front half of the property to minimize grading.

Table 1: Summary of Development Standards

<b>Standards</b>	<b>Hillside &amp; PUD 23.5 Requirements</b>	<b>Proposed</b>	<b>Complies</b>
Front Setback	25 ft.-40 ft. / 40 ft.	40+ ft. from the property line	Yes
Side Yard Setback	40 ft. / 40 ft.	40 ft. on west, and 40 ft. on east	Yes
Rear Yard Setback	40 ft. / 40 ft.	40+ ft.	Yes
Size of Primary Residence	6,000 sq. ft. max./ 6,000 sq. ft. max.	5,807 sq. ft.	Yes

Standards	Hillside & PUD 23.5 Requirements	Proposed	Complies
Size of Accessory Dwelling unit (max.)	1,200 sq. ft.	1,195 sq. ft.	Yes
Impervious Surfaces (maximum area)	8,000 sq. ft.	7,994 sq. ft.	Yes

Due to the location of the subject property, the project is also required to comply with the development standards in the City's Hillside Combining District. Per Section XI-10-45.09-7 of the Zoning Ordinance, the City Council has determined that the home is consistent with the Hillside Architectural Guidelines as demonstrated in Table 2 below.

Table 2: Hillside Zoning Ordinance Compliance

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.	<u>Consistent.</u> The home is located west of the crestline and is subject to a maximum height of 17 feet, as noted in the Conditions of Approval no. 22 in Resolution No. 19-030. Additionally, the home is on a 1.274-acre parcel set back from all property lines and will not interfere with privacy.
(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.	<u>Consistent.</u> The project site is currently undeveloped with few trees. No trees will be removed from the site, and the applicant will plant 24 trees, shrubs and ground cover on the lot. Proposed structures are designed to minimize grading.
(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.	<u>Consistent.</u> The footprints of the home and ADU are orientated at an angle to the front property line. The design of the home, ADU and gazebo are designed to mitigate the perception of excessive bulk.
(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.	<u>Consistent.</u> The project will not exceed 17 feet in height as is permitted for homes located in PUD 23.5 and meets or exceeds all minimum setbacks as required by the City Code. The project is sited to minimize the impairment of natural light and airflow for the adjacent properties and will not impair their utilization of solar energy.
(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.	<u>Consistent.</u> As proposed, the main dwelling and ADU are located where the parcel is relatively flat to minimize grading. The proposed grading plan shows that 565 cubic yards aggregate grading will be required for the construction of the home, ADU and other accessory structures.

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
	The impact will be minimal since the new contours will be designed to blend with the natural contours as demonstrated in the civil drawings and therefore meets the grading ordinance criteria.

### Site & Architectural Design

The project is designed in a contemporary style, which adds to the diversity of the neighborhood. The exterior materials are composed of stucco and a concrete tile roof. The articulation of the architectural forms blending with a variety of finishes creates an attractive front elevation, and an integrated driveway pattern enhances the house and the neighborhood. All exterior materials and finishes work together as a palette of earth tone colors to be harmonious with the surroundings. The colors used and materials are complementary to the neighboring residences.

### Grading and Landscaping

Due to the sloped lot and vehicular access requirements, the applicant has requested that the site be graded in order to make the site feasible for residential development. In an effort to limit the amount of soil to be removed, the applicant has proposed a site plan which locates the proposed home on the flattest portion of the site which will result in 565 cubic yards of cut and fill for the construction of the new home and the accessory dwelling unit and the required grade of the driveway for firetruck access. The proposed landscape plan includes a variety of indigenous flowers, shrubs and trees. As demonstrated in the Project Plans, which are attached to the City Agenda Report dated November 19, 2019 (the "Agenda Report") as Attachment C these plans are consistent with the grading/landscaping requirements within the Hillside Ordinance.

### Crestline Zone of Protection

To protect the quality of views of the hills from the valley floor, development standards related to crestlines have been incorporated into the Zoning Code. Per Municipal Code Section XI-10-45.06, the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes immediately below when viewed from the valley floor. To demonstrate compliance with the crestline zone of protection, the applicant installed "story poles" along the building perimeter and staff took pictures from areas recognized by the City as "vantage points." As demonstrated in Attachment D to the Agency Report, the project will not be visible from the valley floor, and therefore, is compliant with the Crestline Zone of Protection.

### 3. The project is consistent with the Milpitas General Plan in that:

The project is consistent with the Milpitas General Plan, and particularly with Policies 2.a-I-23, which limits new development in the Hillside Area to Very Low Density Residential, open space and park uses. The project meets this finding, as part of an approved Planned Unit Development. The home is designed to fit in with the natural topographic features of the property with little or no visual impact as viewed from the valley floor.

Table 3: General Plan Consistency

Policy	Conformance
<b>2.a-G-3</b> Provide for a variety of housing types and densities that meet the needs of individuals and families.	<u>Consistent.</u> The project will allow development of one residential home in the Hillside District which is consistent with the development standards of the Hillside Area. Low density is one type of housing for

	individuals and families that differs from other residential zones within the city.
<b>2.a-I-23</b> Limit new development in the Hillside Area to only to Very Low Density Residential, open space and park uses.	<u>Consistent.</u> The project is one single-family residence on a vacant hillside lot and maintains the very low-density development standards.
<b>2.a.I-25</b> To ensure that development in the foothills is in keeping with natural character of the hillside, and that views are protected, require city review and approval of all proposed development or major alterations to existing development in the hillside. As part of the review, ensure that: <ul style="list-style-type: none"> <li>• Landscaping is of a type indigenous to the area;</li> <li>• That building designs, materials, and colors blend with the environment; and</li> <li>• Grading is minimized and contoured to preserve the natural terrain quality</li> </ul>	<u>Consistent.</u> The project's low-profile design and earth tone materials will blend with the natural environment of the hillside area. The project proposes 565 cubic yards of cut and fill and the use of indigenous landscaping.
<b>2.a.I-26</b> Establish crestline protection areas around the ridges to ensure that no structures just east of the crestline extend above the crestline sight line.	<u>Consistent.</u> The project site is located west of the crestline and proposed structures do not visually penetrate views of the hillside from the valley floor.

The site is located in the R1-H Single-Family Residential-Hillside Combining District. The "H" Zoning District promotes and encourages the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular constraints associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access and visibility. The proposed project meets the minimum setback requirements for the R1-H Zoning District as well as the development standards set forth in PUD No. 23.5.

**SECTION 5. FINDINGS.** In accordance with Section XI-10-45.09-7 of the Zoning Code, the City Council makes the following required findings based on the evidence in the public record in support of Site Development Permit No. SD18-0016:

1. *Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.*

The proposed home is located west of the crestline with a maximum height of 17 feet, as required in the Conditions of Approval no. 22 in Resolution No. 19-030. Additionally, the proposed home is located on a 1.274-acre parcel and will have a minimum 40-foot setback from all property lines and therefore will not interfere with privacy.

2. *Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.*

The project site is currently undeveloped with few trees. No trees will be removed from the site, and the applicant will plant 24 trees, shrubs and ground cover.

3. *Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.*

The footprint of the proposed home and accessory dwelling unit is angled in its orientation to the front property line. The design of the home and other accessory structures does not create the perception of excessive bulk.

4. *Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.*

The project will not exceed 17 feet in height as required for homes located in PUD No. 23.5 and meets or exceeds all minimum setbacks as required by the City Code. The project is sited to minimize the impairment of natural light and airflow for the adjacent properties and will not impair their utilization of solar energy.

5. *Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.*

As proposed, the main dwelling and ADU shall be located where the parcel is relatively flat so that grading is minimized. The proposed grading plan shows that 565 cubic yards aggregate grading will be required for the construction of the primary residence and accessory structures. The impact will be minimal since the new contours will be designed to blend with the natural contours as demonstrated in the civil drawings and therefore meets the grading ordinance criteria.

**SECTION 6. FINDINGS.** In accordance with Section XI-10-57.03 (2)(F) of the Zoning Code, the City Council makes the following required findings based on the evidence in the public record in support of Minor Site Development Permit No. MS19-0174:

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

Per Section XI-10-13-08(3)(b) of the Zoning Ordinance, a detached ADU in the Hillside Combining District must be located in the rear half of the lot. Per Section XI-10-45.09.7(e) of the Site and Architectural Guidelines for the Hillside Combining District, all grading must be minimized. The architectural design and site planning of the proposed accessory family dwelling unit are aesthetically compatible with the neighboring properties, with an emphasis of minimizing changes to the natural topography by locating a portion of the proposed accessory dwelling unit within the front half of the property. Staff recommends that the proposed site design merits approval based on the goal to minimize grading and disturbance of natural topography on the site.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

As described within the staff report, the proposed accessory family dwelling unit meets the development standards in the Single-Family Residential-Hillside Zoning District and Calaveras Ridge PUD No. 23.5 for setbacks, height requirements and landscaping.

3. *The project is consistent with the Milpitas General Plan.*

The project is consistent with Policies 2.a-I-23 of the Milpitas General Plan, which limits new development in the Hillside Area to Very Low Density Residential, open space and park uses. The

project meets this finding as part of an approved Planned Unit Development. The home is designed to fit in with the natural topographic features of the property and reduces the visual impact as viewed from the valley floor.

**SECTION 7. City Council Decision and Approval**

Based on the above Findings, the City Council of the City of Milpitas hereby approves Site Development Permit No. SD18-0016 and Minor Site Development Permit No. MS19-0174, subject to the Conditions of Approval attached hereto as **Exhibit 1**.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## EXHIBIT 1

### CONDITIONS OF APPROVAL FOR SITE DEVELOPMENT PERMIT NO. P-SD18-0016 AND MINOR SITE DEVELOPMENT PERMIT NO. P-MS19-0174 , 898 CALAVERAS RIDGE DRIVE (APN 029-06-038)

#### General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. Planned Unit Development Amendment Permit No. SD18-0016 and Minor Site Development Permit No. MS19-0174, (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. The Permittee shall develop the approved project in conformance with the approved plans (dated September 25, 2019), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. **(P)**
3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
6. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
7. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
8. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

9. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any and all third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void or annul the City's approval of SITE DEVELOPMENT PERMIT NO. SD18-0016 AND MINOR SITE DEVELOPMENT PERMIT NO. MS19-0174; including any environmental determination made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then the Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Permittee. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to SITE DEVELOPMENT PERMIT NO. SD18-0016 AND MINOR SITE DEVELOPMENT PERMIT NO. MS19-0174 and the balance of the Permit shall be unaffected by said Government Code section. **(CA)**
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code. **(P)**
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on October 9, 2019, in accordance with these Conditions of Approval. **(P)** Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the

approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Prior to the issuance of a building permit, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
17. Streets shall be designed to generally follow the contours and land form in order to minimize cut and fill. Exposed walls and facing roadways and retaining walls shall be no greater than six feet in height. Crib walls fencing roadways shall be no greater than 15 feet in height. **(P)**
18. Landscaping coverage and stabilization of graded slopes shall be selected and designed to be compatible with surrounding natural vegetation or to replace removed natural vegetation and should recognize climatic, soil, and ecologic characteristic of the region. Plan materials that require excessive water after becoming established should be avoided. **(P)**
19. Trees which have a six inch or greater diameter trunk size at a point three feet above grade may not be removed without obtaining prior approval from the City. The location of all such trees shall be shown on all plans submitted for approval. The Planning Commission, upon review of an "S" Zone application approval, shall have the power to authorize removal, relocation or replacement if the Permittee can show that such requirement is unreasonable as applied to the particular property. If the removal is permitted, the replacement of any trees removed pursuant to this section shall be at a five to one (5:1) ratio. **(P)**
20. The proposed home shall be located west of the crestline and is subject to a maximum height of 17 feet.
21. Within six months, or such other period established by the Planning Commission, after the commencement of grading activities, all graded areas not covered by an impervious surface shall be stabilized in such manner as shall be approved by the Community Development Manager. **(P)**
22. Where two cut-or-fill slopes intersect, the intersection shall be horizontally rounded and blended. **(P)**
23. Where any cut-or-fill slopes intersect the natural grade, the intersection of each slope shall be vertically and/or horizontally rounded and blended. **(P)**
24. Previous Approvals. Permittee shall abide by and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
26. Compliance with Fire Department and California Fire Code. The project/development shall comply with the requirements of the Fire Department and the California Fire Code, as demonstrated in Fire Department's Memorandum, dated December 5, 2018, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department. **(F)**
27. Compliance with Building Department. The Project shall comply with the requirements of the 2016 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and the 2016 Milpitas Municipal Code, as demonstrated in Building and Safety Department's Memorandum, dated July 26, 2019. **(B)**

28. Compliance with Engineering Department. The project/development shall comply with the requirements of the Engineering Department, as demonstrated in the Engineering Department's Memorandum, dated July 24, 2019. (E)

**Special Conditions:**

29. Use of the property shall be strictly limited to one single-family residence with one accessory dwelling unit. (P)
30. No portion of the property shall be converted or used for any purpose other than its allowed use as a single-family residence. No portion of the single-family residence shall be converted or used as a Place of Assembly, Dormitory, Commercial Education or Training Facility, Commercial Recreation, or Entertainment Use. (P)
31. Fences and walls located within the front yard shall not exceed fifty-four (54) inches in height. (P)
32. Landscaping shall include only native trees and plants as selected by a certified landscape architect or arborist. New landscaping shall not include any palm trees. (P)
33. An updated detailed site specific geotechnical investigation shall be performed to address the seismic slope stability issues as well as providing recommendations for foundation design and other geotechnically related parameters as recommended in the Geotechnical Peer Review letter by GEI, Inc. dated 3/24/2006. (B)
34. The existing trench backfill in the vicinity of the new house should be sub-excavated and properly compacted based on the recommendations in the updated geotechnical investigation report as recommended in the Geotechnical Peer Review letter by GEI, Inc. dated 3/24/2006. (B)
35. The Project Engineering Geologist who prepared the Fault Investigation Report by John Doyle & Associates, Inc. dated 2/3/2006 should review the final site plans to determine that the location of the proposed residential structure is within the building envelope recommended in the report. (B)
36. The Project Engineering Geologist who prepared the Fault Investigation Report by John Doyle & Associates, Inc. dated 2/3/2006 should observe all excavations and the Project Geotechnical Engineer who will be providing the updated geotechnical investigation report should observe all excavations and foundation operations and provide additional recommendations if necessary as recommended in the Slope Stability Screening Analysis Report by Pollak Engineering, Inc. dated 8/25/2008. (B)
37. The Project Geotechnical Engineer, Project Architect, Project Structural Engineer shall review the Geotechnical Peer Review letter by GEI, Inc. dated 3/24/2006 and the Slope Stability Screening Analysis by Pollak Engineering, Inc. dated 8/25/2008 and all documents as referenced in these reports to ensure that the information and recommendations contained in these documents are incorporated into the plans. (B)
38. The Project Geotechnical Engineer should review the final grading plans, site plans and foundation plans to determine that the design conforms with their design recommendations. (B)

**Key:**

(P) = Planning  
(B) = Building  
(E) = Engineering  
(F) = Fire Prevention  
(PD) = Police Department  
(CA) = City Attorney



## MILPITAS PLANNING COMMISSION STAFF REPORT

October 9, 2019

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**APPLICATION:** **NEW HILLSIDE RESIDENCE – Site Development Permit No. SD18-0016 and Minor Site Development Permit P-MS19-0174** – A Site Development Permit to develop a new 5,807-square foot, one-story, single-family residence, with a metal fence up to six feet in height at the front of the property and an internal fence with a gate up to nine feet in height, and a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be located within the front half of the property on a vacant 1.274-acre hillside lot within Planned Unit Development No. 23.5, zoned R1-H Single-Family Residential Hillside Combining District with a Site and Architectural (-S) overlay.

**RECOMMENDATION:** **Staff recommends that the Planning Commission adopt Resolution No. 19-030, recommending approval of Site Development Permit SD18-0016 and Minor Site Development Permit P-MS19-0174 to the City Council, subject to the attached Conditions of Approval.**

**LOCATION:**  
Address/APN: 898 Calaveras Ridge Drive (APN 029-06-038)  
Area of City: Calaveras Ridge Drive

**PEOPLE:**  
Project Applicant: Kevin Chiang, Architect  
Property Owner: Jibing Lin  
Project Planner: Krishna Kumar, Assistant Planner

**LAND USE:**  
General Plan Designation: Hillside Medium-Density (HMD)  
Zoning District: Single Family Residential-Hillside (R1-H)  
Planned Unit Development: No. 23.5  
Site Area: 1.274 acres

**ENVIRONMENTAL:** Categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303(a) (New Construction or Conversion of Small Structures) and Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning).

## **EXECUTIVE SUMMARY**

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The proposed project includes a Site Development Permit for the following:

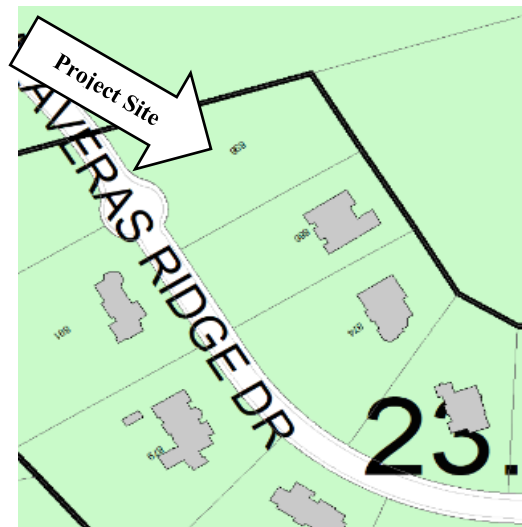
1. Develop a 5,807-square foot, one-story single-family residence on 1.274 acres
2. Allow a metal fence up to six feet in height along the street frontage
3. Allow an internal fence with a gate up to nine feet in height

The proposed project also includes a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be located within the front half of the property to minimize grading on a vacant hillside lot.

**Map 1**  
**Project Location**



**Map 2:**  
**Zoning Map**



## BACKGROUND

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### ***History***

On September 1, 1981, the City Council approved Planned Unit Development (PUD) No. 23A (now known as PUD No. 23.5), also known as Calaveras Ridge, to allow the development of Residential PUD No. 23A and the Tentative Map for a 17-lot hillside residential subdivision on approximately 40 acres. The original lots ranged between approximately 0.9-acres and 7.0-acres. Review of site and architectural design for the development of each home site is required under the provisions of an “S” Zone Application or Site Development Permit. Each home site is also restricted to a precise building envelope established by the PUD. To date, a majority of the original lots have been developed.

### ***The Application***

The applicant’s request includes a *Site Development Permit* to:

1. Develop a 5,807-square foot, one-story single-family residence on 1.274 acres
2. Allow a metal fence up to six feet in height along the street frontage
3. Allow an internal fence with a gate up to nine feet in height

The applicant’s request also includes a *Minor Site Development Permit* to allow a portion of the accessory dwelling unit to be located within the front half of the property to minimize grading on a vacant hillside lot.

### ***Process***

In addition to satisfying the substantive and procedural requirements typically applicable to a Site Development Permit and Minor Site Development Permit, the application must be considered by both the Planning Commission and the City Council due to the project’s location within the Hillside Combining District (“H”) (Milpitas Municipal Code Section XI-10-45.09) for conformance with the Hillside Site and Architectural Guidelines.

## PROJECT DESCRIPTION

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### ***Location and Context***

The project site is located in the northeastern portion of the City of Milpitas in the hillside area. Table 1 provides a summary of the Zoning and Land Uses surrounding the site:

**Table 1:**  
**Surrounding Zoning and Land Uses**

	General Plan	Zoning	Existing Use
<b>Subject Site</b>	Hillside Medium Density (HMD)	Single-Family Residential-Hillside (R1-H)	Vacant
<b>North</b>	Hillside Low Density (HLD)	Single-Family Residential-Hillside (R1-H)	Vacant

<b>South</b>	Hillside Medium Density (HMD)	Single-Family Residential-Hillside (R1-H)	Single-family home
<b>East</b>	NA	Single-Family Residential-Hillside (R1-H)	Vacant
<b>West</b>	Hillside Medium Density (HMD)	Single-Family Residential-Hillside (R1-H)	Vacant

## PROJECT ANALYSIS

### ***General Plan and Zoning Conformance***

The General Plan designation for the project site is Hillside Medium Density (HMD). The General Plan details the goals, objectives and policies for the City's Hillside Area. This area is characterized by gentle to steep slopes, grassy terrain with some chaparral and trees, wildlife, geologically unstable areas, the Ed R. Levin County Regional Park, and a feeling of remoteness from the more urban portions of the city. The Hillside Medium Density designation allows a maximum of three (3) units per gross acre. The project is in conformance with the policies and standards in the City's General Plan policies, as outlined in Table 2:

**Table 2: General Plan Consistency**

<b>Policy</b>	<b>Conformance</b>
<b><i>2.a-G-3</i></b> <i>Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	<u>Consistent.</u> The project will allow development of one residential home in the Hillside District which is consistent with the development standards of the Hillside Area. Low density is one type of housing for individuals and families that differs from other residential zones within the city.
<b><i>2.a-I-23</i></b> <i>Limit new development in the Hillside Area to only to Very Low Density Residential, open space and park uses.</i>	<u>Consistent.</u> The project is one residential home on the vacant hillside lot and maintains the very low-density development standards.
<b><i>2.a.I-25</i></b> <i>To ensure that development in the foothills is in keeping with natural character of the hillside, and that views are protected, require city review and approval of all proposed development or major alterations to existing development in the hillside.</i>	<u>Consistent.</u> The project's low-profile design and earth tone materials will blend with the natural environment of the hillside area. The project proposes 565 cubic yards of cut and fill and the use of indigenous landscaping such as Deodar cedar, Canary Island Palm tree, Oleander Pink shrubs, etc.

<p><i>As part of the review, ensure that:</i></p> <ul style="list-style-type: none"> <li>• <i>Landscaping is of a type indigenous to the area;</i></li> <li>• <i>That building designs, materials, and colors blend with the environment; and</i></li> <li>• <i>Grading is minimized and contoured to preserve the natural terrain quality</i></li> </ul>	
<p><b>2.a.I-26</b> <i>Establish crestline protection areas around the ridges which will ensure that buildings and grading west of the first ridge do not visually penetrate a band of land that lies 100 feet vertically below the apparent crestline when viewed from certain specific sites on the valley floor and that no structures just east of the crestline extend above the crestline sight line.</i></p>	<p><u>Consistent.</u> The project site is located west of the crestline and is not at risk of visually penetrating views of the hillside from the valley floor.</p>

The site is located in the R1-H Single-Family Residential-Hillside Combining District. The “H” Zoning District promotes and encourages the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular constraints associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access and visibility. The proposed project meets the minimum setback requirements for the R1-H zoning district as well as the development standards set forth by PUD No. 23.5.

### ***Development Standards***

Table 3 demonstrates the project’s consistency with the applicable development standards of the R1-H zone and PUD 23.5:

**Table 3:**  
**Summary of Development Standards**

<b>Standards</b>	<b>Hillside &amp; PUD 23.5 Requirements</b>	<b>Proposed</b>	<b>Complies</b>
Front Setback	25 ft.-40 ft. / 40 ft.	40 + ft. from the property line	Yes
Side Yard Setback	40 ft. / 40 ft.	40 ft. on west, and 40 ft. on east.	Yes
Rear Yard Setback	40 ft. / 40 ft.	40+ ft.	Yes
Size of Main Residence	6,000 sq. ft. maximum/ 6,000 sq. ft. maximum	5,807 sq. ft.	Yes

Standards	Hillside & PUD 23.5 Requirements	Proposed	Complies
Size of Accessory Dwelling unit (maximum area)	1,200 sq. ft.	1,195 sq. ft.	Yes
Impervious Surfaces (maximum area)	8,000 sq. ft.	7,994 sq. ft.	Yes
Building Height (maximum)	17 ft. west of crestline; 27 ft. east of crestline	17 ft.	Yes

Due to the subject property's location, the project is also required to comply with the development standards in the City's Hillside Combining District. Per Section XI-10-45.09-7 of the Zoning Ordinance, the Planning Commission and City Council shall consider the following guidelines in their review of proposed new development. Staff has determined the home to be consistent with the Hillside Architectural Guidelines as demonstrated below. See Table 4 below for consistency:

**Table 4**  
**Hillside Zoning Ordinance Compliance**

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
<i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i>	<u>Consistent.</u> The home is located west of the crestline and is subject to a maximum height of 17 feet, as noted in the Conditions of Approval no. 22 in Resolution No. 19-030. Additionally, the home is on a 1.274-acre parcel set back from all property lines and will not interfere with privacy.
<i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>	<u>Consistent.</u> The project site is currently undeveloped with few trees. No trees will be removed from the site, and the applicant will plant 24 trees, shrubs and ground cover on the lot. Proposed structures are designed to minimize grading.
<i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should</i>	<u>Consistent.</u> The footprint of the home and accessory dwelling unit is angled in its orientation to the front property line. The design of the home, accessory dwelling unit and gazebo are designed to mitigate the perception of excessive bulk.

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
<i>minimize the perception of excessive bulk.</i>	
<i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i>	<b>Consistent.</b> The project will not exceed 17 feet in height as is permitted for homes located in PUD 23.5 and meets or exceeds all minimum setbacks as required by the City Code. The project is sited to minimize the impairment of natural light and airflow for the adjacent properties and will not impair their utilization of solar energy.
<i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>	<b>Consistent.</b> As proposed, the main dwelling and the accessory family dwelling unit shall be located where the parcel is relatively flat so that grading can be minimized. The proposed grading plan shows that 565 cubic yards aggregate grading will be required for the construction of the home, accessory family dwelling unit and the accessory structure. The impact will be minimal since the new contours will be designed to blend with the natural contours as demonstrated in the civil drawings and therefore meets the grading ordinance criteria.

### ***Site & Architectural Design***

The project is designed in a contemporary style, which adds to the diversity of the neighborhood. The exterior materials are composed of stucco and a concrete tile roof. The articulation of the architectural forms blending with a variety of finishes creates an attractive front elevation, and an integrated driveway pattern enhances the house and the neighborhood. All exterior materials and finishes work together as a palette of earth tone colors to be harmonious with the surroundings. The colors used and materials are complementary to the neighboring residences.

### ***Grading and Landscaping***

Due to the sloped lot and vehicular access requirements, the applicant has requested that the site be graded in order to make the site feasible for residential development. In an effort to limit the amount of soil to be removed, the applicant has proposed a site plan which locates the proposed home on the flattest portion of the site which will result in 565 cubic yards of cut and fill for the construction of the new home and the accessory dwelling unit and the required grade of the driveway for firetruck access. The proposed landscape plan includes a variety of indigenous flowers, shrubs and trees. As demonstrated in Attachment B (Project Plans) these plans are consistent with the grading/landscaping requirements within the Hillside Ordinance.

### ***Crestline Zone of Protection***

To protect the quality of views of the hills from the valley floor, development standards related to crestlines have been incorporated into the Zoning Code. Per Municipal Code Section XI-10-45.06,

the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes immediately below when viewed from the valley floor. To demonstrate compliance with the crestline zone of protection, the applicant installed “story poles” along the building perimeter and staff took pictures from areas recognized by the City as “vantage points. As demonstrated in Attachment C, the project will not be visible from the valley floor, and therefore, is compliant with the Crestline Zone of Protection.

## **FINDINGS FOR APPROVAL (OR DENIAL)**

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A finding is a statement of fact relating to the information that the Planning Commission must consider in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Based on substantial evidence in the public record, Staff has determined that the proposed project is consistent with the General Plan, Zoning Ordinance, and all required Findings.

### ***Site Development Permit Findings (Section XI-10-57-03-1(F))***

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

As described within the staff report, the architectural design and site planning of the proposed home is aesthetically compatible with the neighboring homes with an emphasis of minimizing changes to the natural topography. The proposed single-family residence and accessory dwelling unit incorporate earth-tone colors and are sited and designed in a manner that does not draw attention when viewed from the valley floor.

2. *The project is consistent with the Milpitas Zoning Ordinance in that:*

As described within the staff report, the proposed home meets the development standards in the R1-H Single-Family Residential-Hillside Zoning District and PUD No. 23.5 (Calaveras Ridge) for setbacks, height requirements, and landscaping. Staff supports the applicant’s request for a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be located within the front half of the property to minimize grading.

3. *The project is consistent with the Milpitas General Plan in that:*

The project is consistent with the Milpitas General Plan, and particularly with Policies 2.a-I-23, which limits new development in the Hillside Area to Very Low Density Residential, open space and park uses. The project meets this finding, as part of an approved Planned Unit Development. The home is designed to fit in with the natural topographic features of the property with little or no visual impact as viewed from the valley floor.

### ***Minor Site Development Permit Findings (Section XI-10-57.03 (2)(F))***

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

Per Section XI10-13-08(3)(b) of the Zoning Ordinance, a detached accessory dwelling unit in the Hillside Combining District must be located in the rear half of the lot. Per Section

XI-10-45.09.7(e) of the Site and Architectural Guidelines for the Hillside Combining District, all grading must be minimized. The architectural design and site planning of the proposed accessory family dwelling unit are aesthetically compatible with the neighboring properties, with an emphasis of minimizing changes to the natural topography by locating a portion of the proposed accessory dwelling unit within the front half of the property. Staff recommends that the proposed site design merits approval based on the goal to minimize grading and disturbance of natural topography on the site.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

As described within the staff report, the proposed accessory family dwelling unit meets the development standards in the Single-Family Residential-Hillside Zoning District and Calaveras Ridge PUD No. 23.5 for setbacks, height requirements and landscaping.

3. *The project is consistent with the Milpitas General Plan.*

The project is consistent with the Milpitas General Plan, and particularly with Policies 2.a-I-23, which limits new development in the Hillside Area to Very Low Density Residential, open space and park uses. The project meets this finding, as part of an approved Planned Unit Development. The home is designed to fit in with the natural topographic features of the property and reduces the visual impact as viewed from the valley floor.

***Hillside Zoning Ordinance (Section XI-45.09-7)***

1. *Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.*

The proposed home is located west of the crestline with a maximum height of 17 feet, as required in the Conditions of Approval no. 22 in Resolution No. 19-030. Additionally, the proposed home is located on a 1.274-acre parcel and will have a minimum 40-foot setback from all property lines and therefore will not interfere with privacy.

2. *Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.*

The project site is currently undeveloped with few trees. No trees will be removed from the site, and the applicant will plant 24 trees, shrubs and ground cover.

3. *Minimize Perception of Excessive Bulk. The design of the proposed main and/or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.*

The footprint of the proposed home and accessory dwelling unit is angled in its orientation to the front property line. The design of the home and other accessory structures does not create the perception of excessive bulk.

4. *Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.*

The project will not exceed 17 feet in height as required for homes located in PUD No. 23.5 and meets or exceeds all minimum setbacks as required by the City Code. The project is sited to minimize the impairment of natural light and airflow for the adjacent properties and will not impair their utilization of solar energy.

5. *Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.*

As proposed, the main dwelling and the accessory dwelling unit shall be located where the parcel is relatively flat so that grading is minimized. The proposed grading plan shows that 565 cubic yards aggregate grading will be required for the construction of the primary residence and accessory structures. The impact will be minimal since the new contours will be designed to blend with the natural contours as demonstrated in the civil drawings and therefore meets the grading ordinance criteria.

## **ENVIRONMENTAL REVIEW**

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The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303(a) (New Construction or Conversion of Small Structures) and Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning).

## **PUBLIC COMMENT/OUTREACH**

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Staff provided public notice for the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on September 27, 2019. In addition, the City sent notices to nineteen property owners and occupants within 300 feet of the project site. A public notice was also provided on the project site, on the City's Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), and posted at City Hall.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing; and
3. Consider the exemption in accordance with CEQA and adopt Resolution 19-030, recommending the City Council approve the Site Development Permit No. SD18-0016 and Minor Site Development Permit No. P-MS19-0174, to allow development of a new 5,807-square-foot single-family residence, with a metal fence up to six feet in height at the front of the property and an internal fence with a gate up to nine feet in height, and a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be located within the

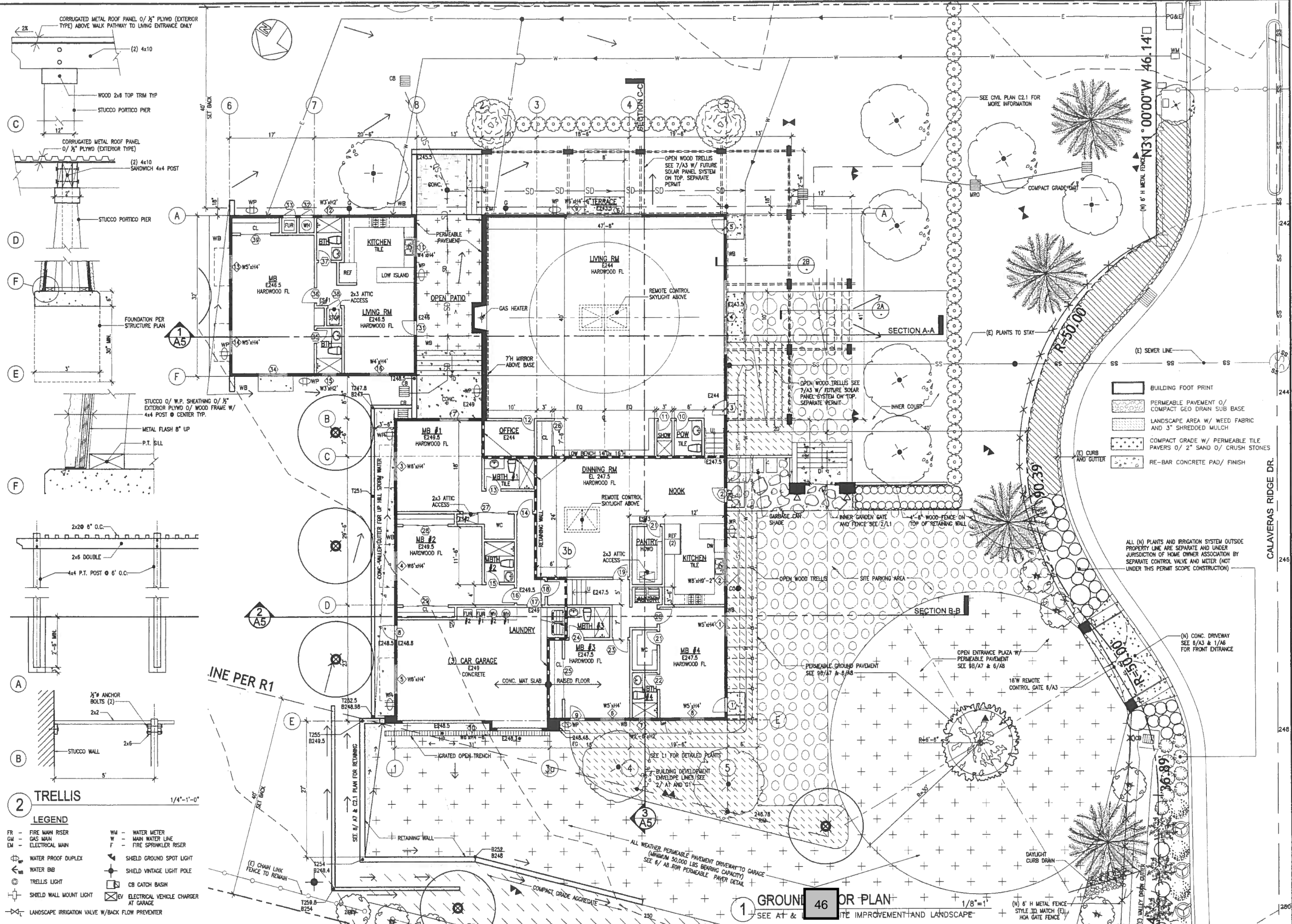
front half of the property on a vacant 1.274-acre hillside lot within Planned Unit Development No. 23.5, zoned R1-H Single-family Residential Hillside Combining District, subject to the findings and attached Conditions of Approval.

## **ATTACHMENTS**

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- A: Resolution 19-030
- B: Project Plans
- C: Story Pole Photographs and View Point Study
- D: Grading Requirement in Hillside Zones





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EXP. 12/31

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PENG RESIDENCE

898 CALAVERAS RIDGE DR

MILPITAS, CA 95035

Sheet Title

Date 02-05-19

Scale

Drawn

Job

File

Sheet A2



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PENG RESIDENCE

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A4

4 DECKING FRAME

5 DECK SECTION

6 TRELLIS SECTION

7 TRELLIS DETAILS

1 SECTION A-A

2 SECTION B-B

3 SECTION C-C

8 DETAIL

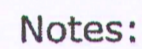
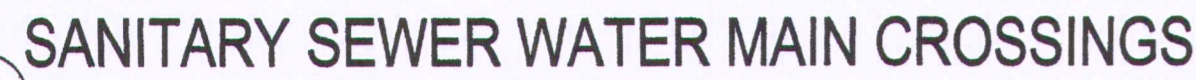
9 BRACKET DETAILS

10 PIER AND GRADE BEAM SECTION

11 ROOF FRAMING PLAN

48





- NOT TO SCALE

## SANITARY SEWER CONNECTION

9

NORMAL SOIL CONDITIONS AND TYPICAL PAVEMENT SECTION. NOT FOR STEEP GRADES OR ADVERSE CONDITIONS.

## TRENCH DETAIL



- NOTES:

- NOT TO SCALE

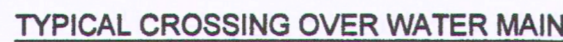
6

## TRENCH CONSTRUCTION

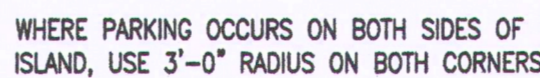
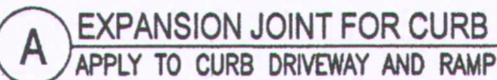
IF ANY



## SANITARY AND STORM SEWER CROSSING



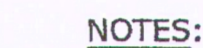
3



## PARALLEL CURBS

### ANGLED CURBS

## PARKING CURB GUIDE LINE



SECTION A-A

SECTION B-B

1. Score lines shall be 1/4 inch deep and 48 inches apart in sidewalk areas.
2. Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium brown finish mix.
3. Welded wire fabric shall be used when driveways serves more than one residential units.
4. Driveway locations shall be approved by the City Engineer.
5. The minimum spacing between driveways serving the same parcel shall be 18 feet.
6. Limits of driveway width shall be as shown unless otherwise approved by the City Engineer.
7. Access to developed site shall be maintained.

NOT TO SCALE

1

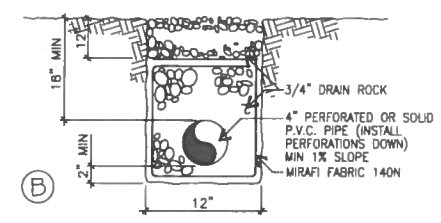
**MATERIALS:**

- (A) Service Saddle shall be Mueller BR2B or approved equal.
- (B) Curb stop, coupling, three part union, meter outlet fitting and meter box shall be per approved equal list. Corporation stop shall be Insulated Mueller N-3500B or approved equal.
- (C) Service pipe shall conform to A.S.T.M. Class K, soft annealed, seamless copper tubing.
- (D) Angle meter stop, Mueller 14276 or approved equal.
- (E) Meter boxes shall be Christy B16 BOX and B16G lid, or approved equal with the word "Water" imprinted on the lid and Christy B9 Meter box with B9D lid (or approved equal) for the sprinkler connection.
- (F) Brass grounding clamp, coated with B3 electrical compound, with brass bolts and brass set screw.

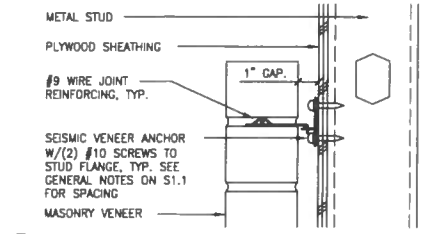
NOTES:

1. Customer service end shall be 1" Mueller H-10871 insulated coupling or approved equal.
2. Water meter with Automatic Remote Read Transmitter Register shall be furnished and installed by the City at the expense of the customer.
3. Meter box shall be set as detailed at the time the service is installed unless otherwise specified by the City Engineer.
4. Where a separated sidewalk occurs , meter box shall be installed 6" from back of curb.
5. Where more than one domestic water meter is required; each meter shall be identified with permanent durable markings to indicate which address, building, tenant space that each meter serves (i.e. brass tag stamped with address).
6. Meter box side openings shall be grouted.
7. Where meter box is located in driveways, box shall be furnished with steel traffic cover. (Christy B16-61G or approved equal)
8. This detail is applicable to laterals serving 1 or 2 dwelling units only on same property.

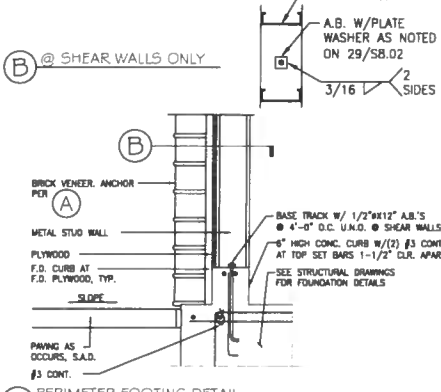
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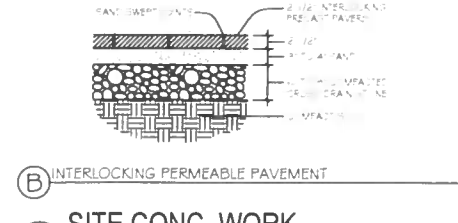
12 SWALE & DRAIN DETAILS  
N.T.S.



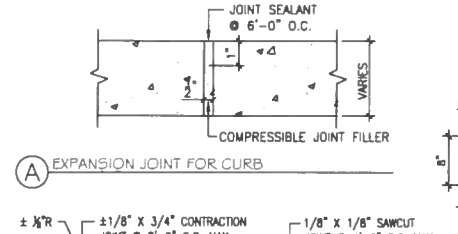
13 DETAILS  
N.T.S.



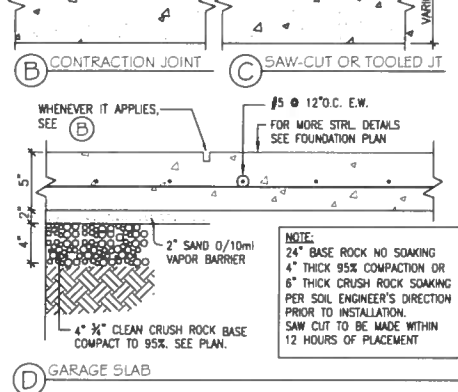
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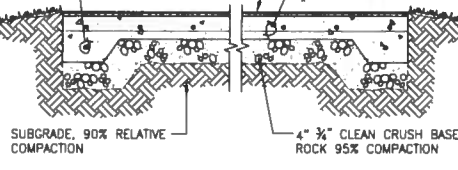
9 SITE CONC. WORK  
EVERY 8'-0" O.C. FOR EXPANSION JOINT



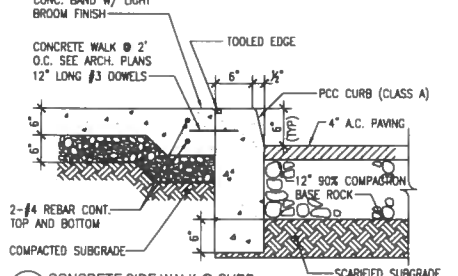
7 ENTRANCE STEPS - SECTION



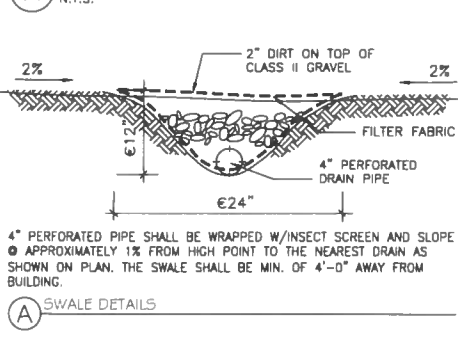
7 ENTRANCE STEPS



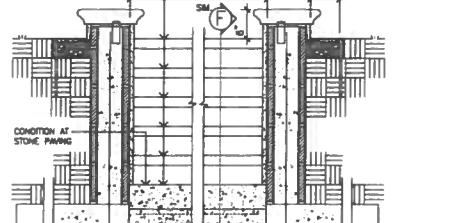
7 ENTRANCE STEPS



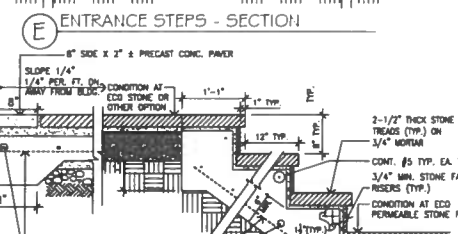
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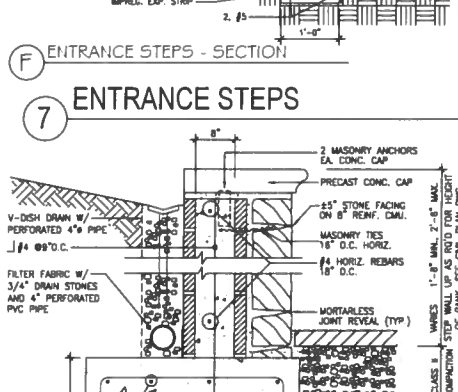
7 ENTRANCE STEPS



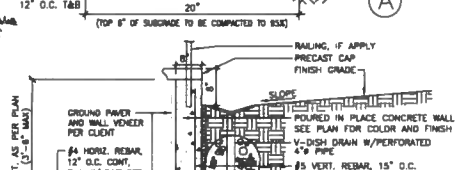
9 SITE CONC. WORK  
EVERY 8'-0" O.C. FOR EXPANSION JOINT



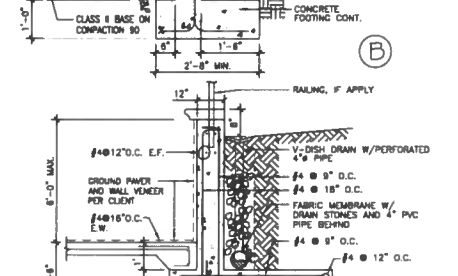
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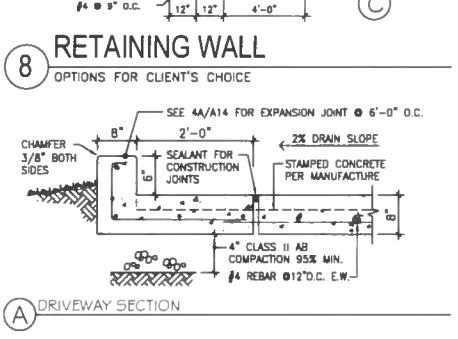
7 ENTRANCE STEPS



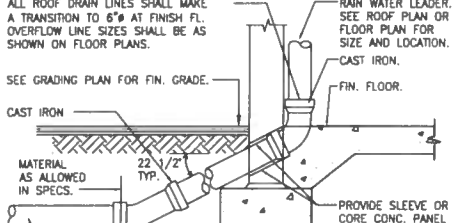
7 ENTRANCE STEPS



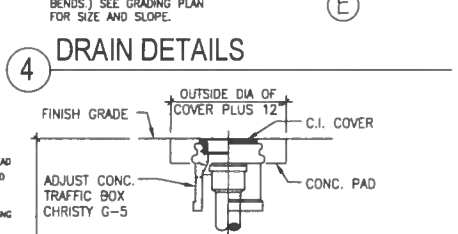
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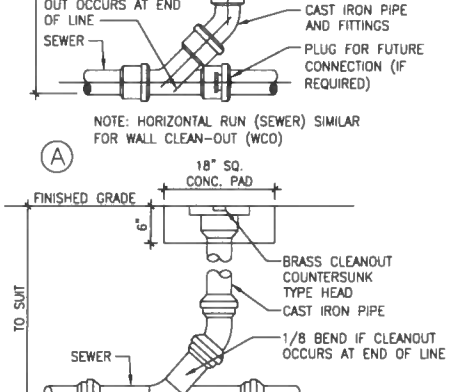
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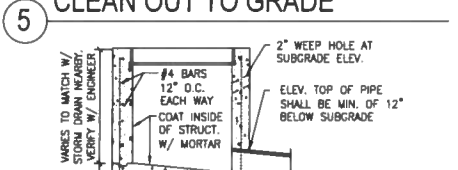
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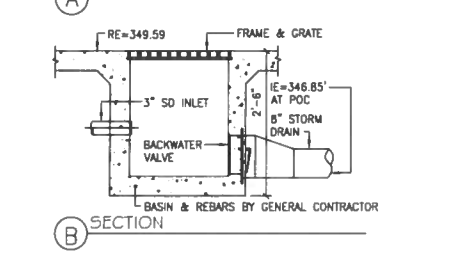
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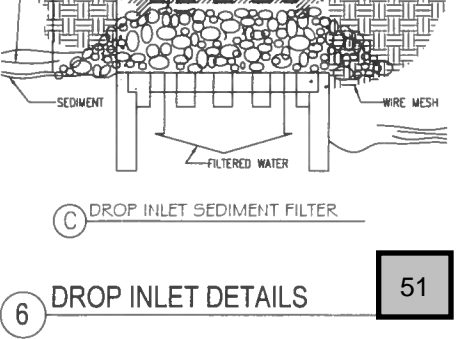
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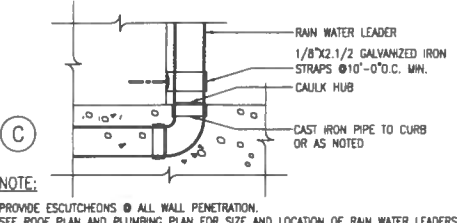
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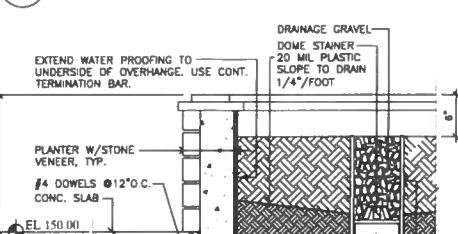
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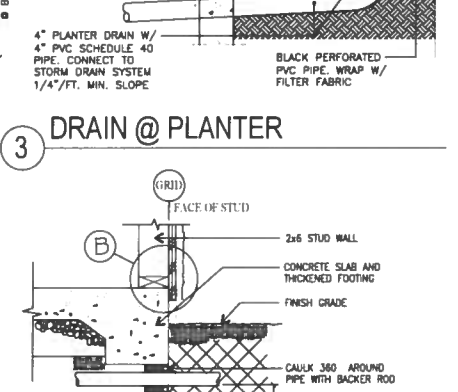
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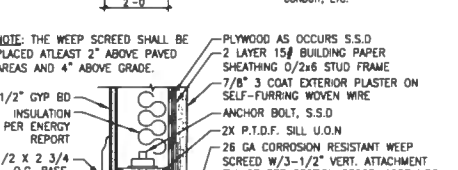
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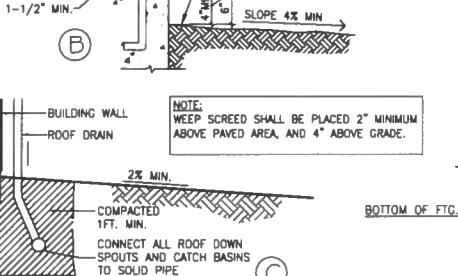
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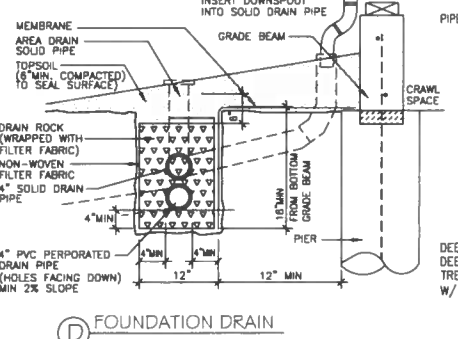
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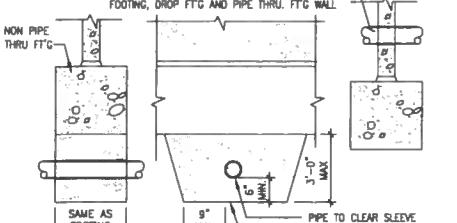
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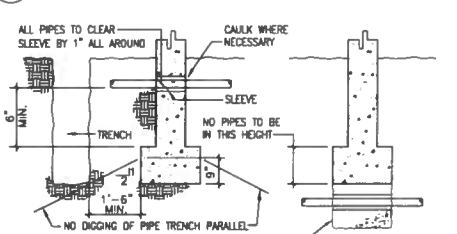
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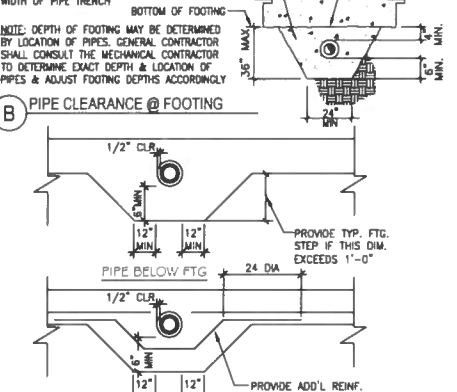
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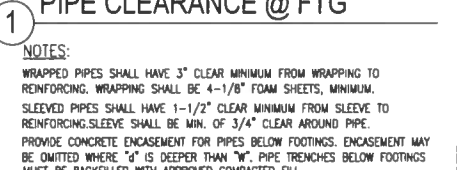
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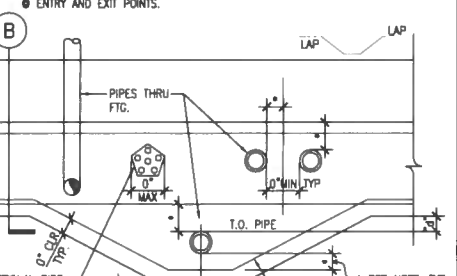
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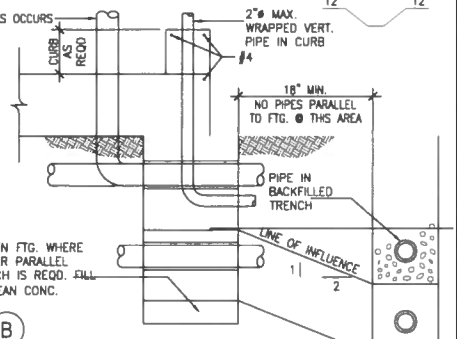
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7 ENTRANCE STEPS



7 ENTRANCE STEPS



7 ENTRANCE STEPS

REVISIONS

KC Associates

KEVIN CHIANG ARCHITECT

1663 QUAIL DR., MILPITAS, CA 95035

Tel: (610)956-1288

E-MAIL: kchiang@kcassoc.com

WWW: www.kcassoc.com

LICENSED ARCHITECT

NO. C11060

REV. 12/11

STATE OF CALIFORNIA

PENG RESIDENCE

898 CALAVERAS RIDGE DR

MILPITAS, CA 95035

Sheet Title

Date 02-05-19

Scale

Drawn

Job

File

Sheet

A7



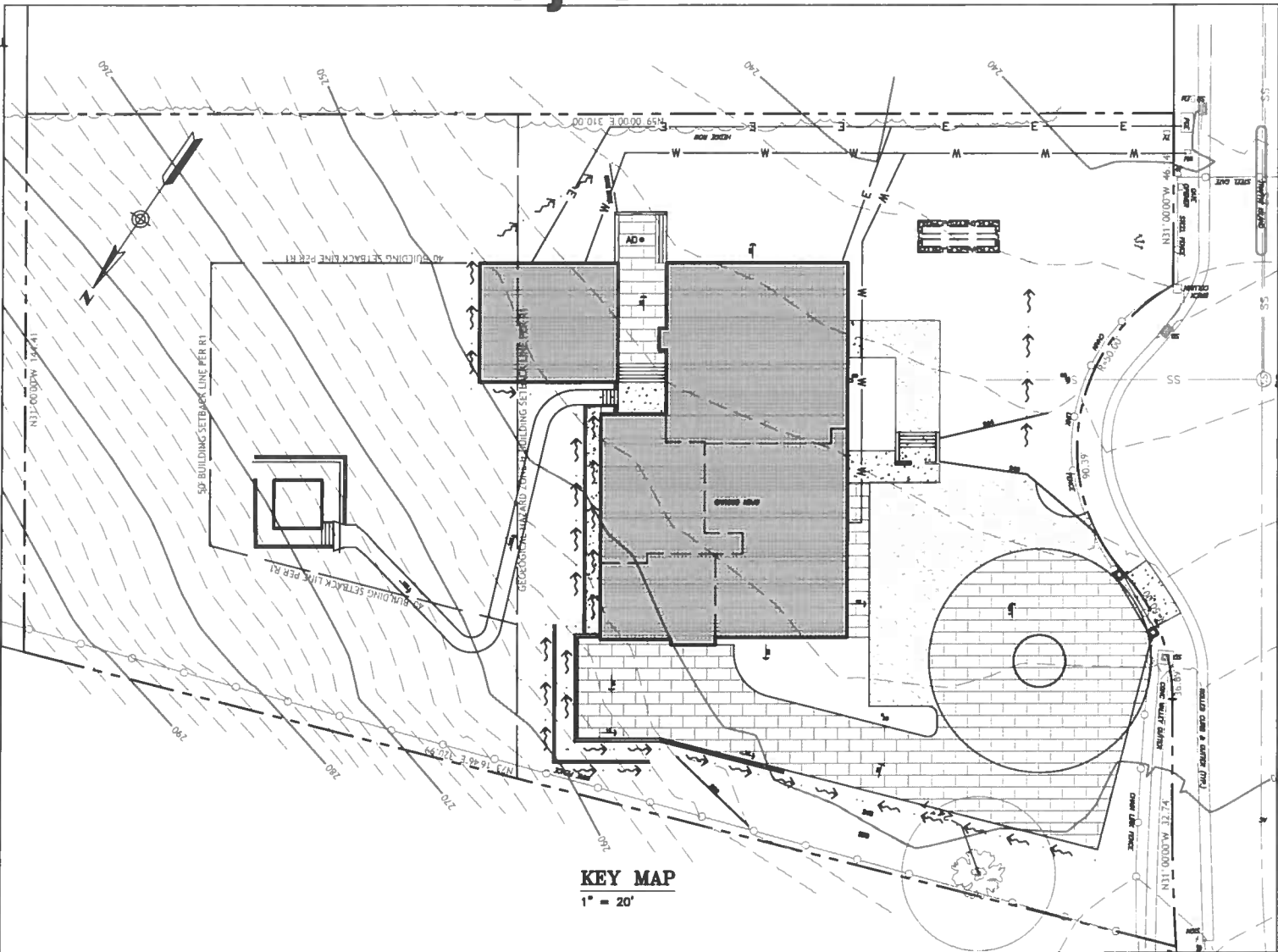
# NEW RESIDENCE 898 CALAVERAS, MILPITAS, CALIFORNIA

## LEGEND

EXISTING	PROPOSED	DESCRIPTION
---	---	BOUNDARY
---	---	PROPERTY LINE
---	---	RETAINING WALL
---	---	LANDSCAPE RETAINING WALL
---	---	SUBDRAIN LINE
---	---	TIGHTLINE
SD	SD	STORM DRAIN LINE
SS	SS	SANITARY SEWER LINE
W	W	WATER LINE
G	G	GAS LINE
P	P	PRESSURE LINE
JT	JT	JOINT TRENCH
---	---	SET BACK LINE
---	---	CONCRETE VALLEY GUTTER
---	---	EARTHEN SWALE
CB	CB	CATCH BASIN
JB	JB	JUNCTION BOX
AD	AD	AREA DRAIN
SDMH	SDMH	CURB INLET
SSMH	SSMH	STORM DRAIN MANHOLE
722.52 INV	722.52 INV	FIRE HYDRANT
200	200	SANITARY SEWER MANHOLE
200	200	STREET SIGN
200	200	SPOT ELEVATION
200	200	FLOW DIRECTION
200	200	DEMOLISH/REMOVE
200	200	BENCHMARK
200	200	CONTOURS
200	200	TREE TO BE REMOVED

## ABBREVIATIONS

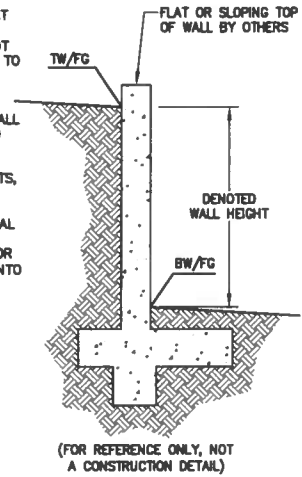
AB	AGGREGATE BASE	LF	LINEAL FEET
AC	ASPHALT CONCRETE	MAX	MAXIMUM
ACC	ACCESSIBLE	MH	MANHOLE
AD	AREA DRAIN	MIN	MINIMUM
BC	BEGINNING OF CURVE	MON.	MONUMENT
B & D	BEARING & DISTANCE	(N)	NEW
BM	BENCHMARK	NO.	NUMBER
BW/FG	BOTTOM OF WALL/FINISH	NTS	NOT TO SCALE
GRADE		O.C.	ON CENTER
CB	CATCH BASIN	O/	OVER
C & G	CURB AND GUTTER	P.A.	PLANTING AREA
CPP	CENTER LINE	PED	PEDESTRIAN
	CORRUGATED PLASTIC PIPE	PIV	POST INDICATOR VALVE
	(SMOOTH INTERIOR)	PSS	PUBLIC SERVICES EASEMENT
COTG	CLEANOUT TO GRADE	R	PROPERTY LINE
CONC	CONCRETE	PP	POWER POLE
CONST	CONSTRUCT or -TION	PUE	PUBLIC UTILITY EASEMENT
CONC COR	CONCRETE CORNER	PVC	POLYVINYL CHLORIDE
CY	CUBIC YARD	R	RADIUS
D	DIAMETER	RCP	REINFORCED CONCRETE PIPE
DI	DROP INLET	RM	RIM ELEVATION
DIP	DUCTILE IRON PIPE	RW	RAINWATER
EA	EACH	R/W	RIGHT OF WAY
EC	END OF CURVE	S	SLOPE
EG	EXISTING GRADE	S.A.D.	SEE ARCHITECTURAL DRAWINGS
EL	ELEVATIONS	SAN	SANITARY
EP	EDGE OF PAVEMENT	SD	STORM DRAIN
EQ	EQUIPMENT	SDMH	STORM DRAIN MANHOLE
EW	EACH WAY	SHEET	SEE LANDSCAPE DRAWINGS
(E)	EXISTING	SPEC	SPECIFICATION
FF	FACE OF CURB	SS	SANITARY SEWER
FG	FINISHED FLOOR	SSCO	SANITARY SEWER CLEANOUT
FG	FINISHED GRADE	SSMH	SANITARY SEWER MANHOLE
FH	FIRE HYDRANT	ST	STREET
FL	FLOW LINE	STA	STATION
FS	FINISHED SURFACE	STD	STANDARD
G	GAS	STRUCT	STRUCTURAL
GA	GAGE OR GAUGE	TC	TELEPHONE
GB	GRADE BREAK	TEMP	TEMPORARY
HDPE	HIGH DENSITY CORRUGATED	TP	TOP OF PAVEMENT
	POLYETHYLENE PIPE	TW/FG	TOP OF WALL/FINISH GRADE
HORIZ	HORIZONTAL	TYP	TYPICAL
HI PT	HIGH POINT	VC	VERTICAL CURVE
H&T	HUB & TACK	VCP	VITRIFIED CLAY PIPE
INV	INVERT ELEVATION	VERT	VERTICAL
JB	JUNCTION BOX	W	WITH
JT	JOINT TRENCH	W, WL	WATER LINE
JP	JOINT UTILITY POLE	WM	WATER METER
L	LENGTH	WWF	WELDED WIRE FABRIC
LNDG	LANDING		



KEY MAP  
1" = 20'

## RETAINING WALL NOTES

- TW/FG REPRESENTS FINISHED EARTHEN GRADE OR PAVEMENT ELEVATION AT TOP OF WALL, NOT ACTUAL TOP OF WALL MATERIAL. BW/FG REPRESENTS FINISH EARTHEN GRADE OR PAVEMENT ELEVATION AT BOTTOM OF WALL NOT INCLUDING FILL FOUNDATION. GRADES INDICATED ON THESE PLANS REFER TO THE FINISHED GRADES ADJACENT TO THE RETAINING WALL, NOT INCLUDING FOOTING, FREEBOARD, ETC.
- GRADES SHOWN ON PLAN AS TW X.XX & BW X.XX REPRESENT DENOTED WALL HEIGHT ONLY. THE ACTUAL WALL HEIGHT AND DEPTH MAY DIFFER DUE TO CONSTRUCTION REQUIREMENTS.
- REFER TO SPECIFIC WALL CONSTRUCTION DETAIL FOR STRUCTURAL ELEMENTS, FREEBOARD, AND EMBEDMENT.
- REFER TO ARCHITECTURAL, LANDSCAPE ARCHITECTURE, AND/OR STRUCTURAL PLANS FOR DETAILS, WALL ELEVATIONS, SUBDRAINAGE, WATERPROOFING, FINISHES, COLORS, STEEL REINFORCING, MATERIALS, ETC. PROVIDE CLIPS OR OTHER MEANS OF SECURING FINISH MATERIALS AS NECESSARY (WET SET INTO THE WALL).
- ALL RETAINING WALLS SHOULD HAVE A BACK-OF-WALL SUB-SURFACE DRAINAGE SYSTEM INCLUDING WEEDHOLES TO PREVENT HYDROSTATIC PRESSURE.
- SEE DETAIL SHEET FOR SPECIFIC INFORMATION.
- PROVIDE GUARDRAIL (WHERE APPLICABLE AND DESIGNED BY OTHERS) AS REQUIRED FOR GRADE SEPARATION OF 30 INCHES OR MORE MEASURED 5' HORIZONTALLY FROM FACE OF WALL, PER CBC.



(FOR REFERENCE ONLY, NOT A CONSTRUCTION DETAIL)

## ESTIMATED EARTHWORK QUANTITIES

	CUBIC YARDS	TOTAL CUBIC YARDS
CUT	825	-
FILL	60	-
EXPORT	-	565

### NOTE:

GRADING QUANTITIES REPRESENT BANK YARDAGE. IT DOES NOT INCLUDE ANY SWELLING OR SHRINKAGE FACTORS AND IS INTENDED TO REPRESENT IN-SITU CONDITIONS. QUANTITIES DO NOT INCLUDE OVER-EXCAVATION, TRENCHING, STRUCTURAL FOUNDATIONS OR PIERS, OR POOL EXCAVATION (IF ANY). NOTE: ADDITIONAL EARTHWORKS, SUCH AS KEYWAYS OR BENCHING MAY BE REQUIRED BY THE GEOTECHNICAL ENGINEER IN THE FIELD AT TIME OF CONSTRUCTION. CONTRACTOR TO VERIFY QUANTITIES.

\* BUILDING PAD NOTE:  
ADJUST PAD LEVEL AS REQUIRED. REFER TO STRUCTURAL PLANS FOR SLAB SECTION OR CRAWL SPACE DEPTH TO ESTABLISH PAD LEVEL.



VICINITY MAP  
NTS

## REFERENCES

THIS GRADING AND DRAINAGE PLAN IS SUPPLEMENTAL TO:

TOPOGRAPHIC SURVEY BY:  
AMERICAN BASELINE COMPANY  
2484 EL CAMINO REAL STE# 117  
SANTA CLARA, CA 95051  
408-394-9281

### ENTITLED:

"LOT 4, TRACT NO. 7328  
CALAVERAS RIDGE ESTATES, 535 MAPS 8-9  
SANTA CLARA COUNTY, CALIFORNIA  
APN: 029-08-038  
DATED: MAY 2018

### 2. SITE PLAN BY KCA ARCHITECTS, ENTITLED:

"SITE PLAN"  
NEW RESIDENCE  
898 CALAVERAS RIDGE  
MILPITAS, CALIFORNIA  
DATE: OCTOBER 2018

THE CONTRACTOR SHALL REFER TO THE ABOVE NOTED SURVEY AND PLAN, AND SHALL VERIFY BOTH EXISTING AND PROPOSED ITEMS ACCORDING TO THEM.

## BENCHMARK

CITY OF MILPITAS PUBLIC WORKS  
SANITARY SEWER MANHOLE NO. 1585  
MANHOLE ID NO. 11392  
RIM ELEVATION = 243.60 (NAVD 88)

## IMPERVIOUS SURFACE DATA

EXISTING IMPERVIOUS SURFACE	0
PROPOSED IMPERVIOUS SURFACE	7859 SF
PROPOSED PERVIOUS PAVING	7099 SF
TOTAL LOT AREA	1.27 ACRES
TOTAL DISTURBED AREA	29,452 SF

## BOUNDARY

NOTE: BOUNDARY INFORMATION SHOWN DOES NOT CONSTITUTE A BOUNDARY SURVEY BUT IS COMPILED FROM RECORD DATA. NO WARRANTY OF BOUNDARY INFORMATION IS EXPRESSED OR IMPLIED AND THE LOCATION OF TOPOGRAPHIC FEATURES IN RELATION TO THE PROPERTY LINES IS ACCURATE ONLY TO THE NORMAL AND USUAL STANDARDS OF GRAPHICS AND TOPOGRAPHIC SURVEYING.

## SHEET INDEX

C0.1	TITLE SHEET
C0.2	GRADING SPECIFICATIONS
C2.1	GRADING & DRAINAGE PLAN
C3.1	DETAILS
C3.2	DETAILS
C3.3	SECTIONS
C4.1	EROSION CONTROL PLAN
C4.2	EROSION CONTROL DETAILS
C4.3	CONSTRUCTION BEST MANAGEMENT PRACTICES (SWPPP)



CLARK CIVIL ENGINEERING  
DESIGN • CONSULTING • SURVEY  
17700 Highway One, Redwood Station, CA  
PH: 415-395-4450 FAX: 310-372-0256



NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

SANTA CLARA COUNTY  
APN: 029-08-038

TITLE SHEET

REVISIONS	BY
JOB NO: 218043	
DATE: 5-12-19	
SCALE: AS NOTED	
DESIGN BY: WCC	
DRAWN BY: DR	
SHEET NO:	

C0.1

GENERAL NOTES

ALL GENERAL NOTES, SHEET NOTES, AND LEGEND NOTES FOUND IN THESE DOCUMENTS SHALL APPLY TYPICALLY THROUGHOUT. IF INCONSISTENCIES ARE FOUND IN THE VARIOUS NOTATIONS, NOTIFY THE ENGINEER IMMEDIATELY IN WRITING REQUESTING CLARIFICATION.

THESE DRAWINGS AND THEIR CONTENT ARE AND SHALL REMAIN THE PROPERTY OF CLARK CIVIL ENGINEERING. WHATEVER THE PROJECT FOR WHICH THEY ARE PREPARED IS EXECUTED OR NOT, THEY ARE NOT TO BE USED BY ANY PERSONS ON OTHER PROJECTS OR EXTENSIONS OF THE PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH APPROPRIATE COMPENSATION TO THE ENGINEER.

ALL WORK SHALL COMPLY WITH APPLICABLE CODES AND TRADE STANDARDS WHICH GOVERN EACH PHASE OF WORK INCLUDING, BUT NOT LIMITED TO, CALIFORNIA MECHANICAL CODE, CALIFORNIA PLUMBING CODE, CALIFORNIA ELECTRICAL CODE, CALIFORNIA FIRE CODE, CALTRANS STANDARDS AND SPECIFICATIONS, AND ALL APPLICABLE STATE AND/OR LOCAL CODES AND/OR LEGISLATION.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR AND ALL SUBCONTRACTORS TO CHECK AND VERIFY ALL CONDITIONS, DIMENSIONS, LINES AND LEVELS INDICATED. PROPER FIT AND ATTACHMENT OF ALL PARTS IS REQUIRED. SHOULD THERE BE ANY DISCREPANCIES, IMMEDIATELY NOTIFY THE ENGINEER FOR CORRECTION OR ADJUSTMENT. THE EVENT OF FAILURE TO DO SO, THE CONTRACTOR SHALL BE RESPONSIBLE FOR CORRECTION OF ANY ERROR.

ALL DIMENSIONS AND CONDITIONS SHALL BE CHECKED AND VERIFIED ON THE JOB BY EACH SUBCONTRACTOR BEFORE HE/SHE BEGINS HIS/HER WORK. ANY ERRORS, OMISSION, OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER/CONTRACTOR BEFORE CONSTRUCTION BEGINS.

COMMENCEMENT OF WORK BY THE CONTRACTOR AND/OR ANY SUBCONTRACTOR SHALL INDICATE KNOWLEDGE AND ACCEPTANCE OF ALL CONDITIONS DESCRIBED IN THESE CONSTRUCTION DOCUMENTS, OR EXISTING ON SITE, WHICH COULD AFFECT THEIR WORK.

WORK SEQUENCE

IN THE EVENT ANY SPECIAL SEQUENCING OF THE WORK IS REQUIRED BY THE OWNER OR THE CONTRACTOR, THE CONTRACTOR SHALL ARRANGE A CONFERENCE BEFORE ANY SUCH WORK IS BEGUN.

SITE EXAMINATION: THE CONTRACTOR AND ALL SUBCONTRACTORS SHALL THOROUGHLY EXAMINE THE SITE AND FAMILIARIZE HIM/HERSELF WITH THE CONDITIONS UNDER WHICH THE WORK IS TO BE PERFORMED. THE CONTRACTOR SHALL VERIFY AT THE SITE ALL MEASUREMENTS AFFECTING HIS/HER WORK AND SHALL BE RESPONSIBLE FOR THE CORRECTIONS OF THE SAME. NO EXTRA COMPENSATION WILL BE ALLOWED TO THE CONTRACTOR FOR EXPENSES DUE TO HIS/HER NEGLIGENCE TO EXAMINE, OR FAILURE TO DISCOVER, CONDITIONS WHICH AFFECT HIS/HER WORK.

CLARK CIVIL ENGINEERING EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT AND OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO A THIRD PARTY WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION AND CONSENT OF CLARK CIVIL ENGINEERING. IN THE EVENT OF UNAUTHORIZED REUSE OF THESE PLANS BY A THIRD PARTY, THE THIRD PARTY SHALL HOLD HARMLESS CLARK CIVIL ENGINEERING.

CONSTRUCTION IS ALWAYS LESS THAN PERFECT SINCE PROJECTS REQUIRE THE COORDINATION AND INSTALLATION OF MANY INDIVIDUAL COMPONENTS BY VARIOUS CONSTRUCTION INDUSTRY TRADES. THESE DOCUMENTS CANNOT PORTRAY ALL COMPONENTS OR ASSEMBLIES EXACTLY. IT IS THE INTENTION OF THESE ENGINEERING DOCUMENTS THAT THEY REPRESENT A REASONABLE STANDARD OF CARE IN THEIR CONTENT. IT IS ALSO PRESUMED BY THESE DOCUMENTS THAT CONSTRUCTION REVIEW SERVICES WILL BE PROVIDED BY THE ENGINEER. SHOULD THE OWNER NOT RETAIN THE ENGINEER TO PROVIDE SUCH SERVICES, OR SHOULD HE/SHE RETAIN THE ENGINEER TO PROVIDE ONLY PARTIAL OR LIMITED SERVICES, THEN IT SHALL BE THE OWNER'S AND CONTRACTOR'S RESPONSIBILITY TO FULLY RECOGNIZE AND PROVIDE THAT STANDARD OF CARE.

IF THE OWNER OR CONTRACTOR OBSERVES OR OTHERWISE BECOMES AWARE OF ANY FAULT OR DEFECT IN THE PROJECT OR NONCONFORMANCE WITH THE CONTRACT DOCUMENTS, PROMPT WRITTEN NOTICE THEREOF SHALL BE GIVEN BY THE OWNER AND/OR CONTRACTOR TO THE ENGINEER.

THE ENGINEER SHALL NOT HAVE CONTROL OF, OR CHANGE OF AND SHALL NOT BE RESPONSIBLE FOR CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, OR PROCEDURES, OR FOR SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK, FOR THE ACTS OR OMISSIONS OF THE CONTRACTOR, SUBCONTRACTORS, OR ANY OTHER PERSONS PERFORMING ANY OF THE WORK, OR FOR THE FAILURE OF ANY OF THEM TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

SITE PROTECTION

PROTECT ALL LANDSCAPING THAT IS TO REMAIN. ANY DAMAGE OR LOSS RESULTING FROM EXCAVATION, GRADING, OR CONSTRUCTION WORK SHALL BE CORRECTED OR REPLACED BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF ALL EXISTING SITE UTILITIES AND SHALL COORDINATE THEIR REMOVAL OR MODIFICATIONS (IF ANY) TO AVOID ANY INTERRUPTION OF SERVICE TO ADJACENT AREAS. THE GENERAL CONTRACTOR SHALL INFORM HIM/HERSELF OF MUNICIPAL REGULATIONS AND CARRY OUT HIS/HER WORK IN COMPLIANCE WITH ALL FEDERAL AND STATE REQUIREMENTS TO REDUCE FIRE HAZARDS AND INJURIES TO THE PUBLIC.

STORMWATER POLLUTION PREVENTION NOTES

- STONE, HANDLE, AND DISPOSE OF CONSTRUCTION MATERIALS AND WASTES PROPERLY, SO AS TO PREVENT THEIR CONTACT WITH STORMWATER.
- CONTROL AND PREVENT THE DISCHARGE OF ALL POTENTIAL POLLUTANTS, INCLUDING SOLID WASTES, PAINTS, CONCRETE, PETROLEUM PRODUCTS, CHEMICALS, WASH WATER OR SEDIMENT, AND NON-STORMWATER DISCHARGES TO STORM DRAINS AND WATER COURSES.
- USE SEDIMENT CONTROL OR FILTRATION TO REMOVE SEDIMENT FROM DEWATERING EFFLUENT.
- AVOID CLEANING, FUELING, OR MAINTAINING VEHICLES ON SITE, EXCEPT IN A DESIGNATED AREA IN WHICH RUNOFF IS CONTAINED AND TREATED.
- DELINEATE CLEARING LIMITS, EASEMENTS, SETBACKS, SENSITIVE OR CRITICAL AREAS, BUFFER ZONES, TREES AND DISCHARGE COURSE WITH FIELD MARKERS.
- PROTECT ADJACENT PROPERTIES AND UNDISTURBED AREAS FROM CONSTRUCTION IMPACTS USING VEGETATIVE BUFFER STRIPS, SEDIMENT BARRIERS OF FILTERS, DICES, MULCHING, OR OTHER MEASURES AS APPROPRIATE.
- PERFORM CLEARING AND EARTH MOVING ACTIVITIES DURING DRY WEATHER TO THE MAXIMUM EXTENT PRACTICAL.
- LIMIT AND TIME APPLICATIONS OF PESTICIDES AND FERTILIZERS TO PREVENT POLLUTED RUNOFF.
- LIMIT CONSTRUCTION ACCESS ROUTES AND STABILIZE DESIGNATED ACCESS POINTS.
- AVOID TRACKING DIRT OR MATERIALS OFF-SITE; CLEAN OFF-SITE PAVED AREAS AND SIDEWALKS USING DRY SWEEPING METHODS TO THE MAXIMUM EXTENT PRACTICAL.

SUPPLEMENTAL MEASURES

- THE PHRASE "NO DUMPING - DRAINS TO BAY" OR EQUALLY EFFECTIVE PHRASE MUST BE LABELED ON STORM DRAIN INLETS (BY STENCILING, BRANDING, OR PLAQUES) TO ALERT THE PUBLIC TO THE DESTINATION OF STORM WATER AND TO PREVENT DIRECT DISCHARGE OF POLLUTANTS INTO THE STORM DRAIN.
- USING FILTRATION MATERIALS ON STORM DRAIN COVERS TO REMOVE SEDIMENT FROM DEWATERING EFFLUENT.
- STABILIZING ALL DENuded AREAS AND MAINTAINING EROSION CONTROL MEASURES CONTINUOUSLY FROM OCTOBER 1 AND APRIL 30.
- REMOVING SPOILS PROMPTLY, AND AVOID STOCKPILING OF FILL MATERIALS, WHEN RAIN IS FORECAST. IF RAIN THREATENS, STOCKPILED SOILS AND OTHER MATERIALS SHALL BE COVERED WITH A TARP OR OTHER WATERPROOF MATERIAL.
- STORING, HANDLING, AND DISPOSING OF CONSTRUCTION MATERIALS AND WASTES SO AS TO AVOID THEIR ENTRY TO THE STORM DRAIN SYSTEMS OR WATER BODY.
- AVOIDING CLEANING, FUELING, OR MAINTAINING VEHICLES ON-SITE, EXCEPT IN AN AREA DESIGNATED TO CONTAIN AND TREAT RUNOFF.

GRADING & DRAINAGE NOTES:

1. SCOPE OF WORK

THESE SPECIFICATIONS AND APPLICABLE PLANS PERTAIN TO AND INCLUDE ALL SITE GRADING AND EARTHWORK ASSOCIATED WITH THE PROJECT INCLUDING, BUT NOT LIMITED TO THE FURNISHING OF ALL LABOR, TOOLS AND EQUIPMENT NECESSARY FOR SITE CLEARING AND GRUBBING, SITE PREPARATION, DISPOSAL OF EXCESS OR UNSUITABLE MATERIAL, STRIPPING, KEYING, EXCAVATION, OVER EXCAVATION, REDCOMPACTION PREPARATION FOR SOIL RECEIVING FILL, PAVEMENT, FOUNDATION OF SLABS, EXCAVATION, IMPORTATION OF ANY REQUIRED FILL MATERIAL, PROCESSING, PLACEMENT AND COMPACTION OF FILL AND SUBSIDIARY WORK NECESSARY TO COMPLETE THE GRADING TO CONFORM TO THE LINES, GRADING AND SLOPE SHOWN ON THE PROJECT GRADING PLANS.

2. GENERAL

- ALL SITE GRADING AND EARTHWORK SHALL CONFORM TO THE RECOMMENDATIONS OF THESE SPECIFICATIONS AND SOILS REPORT AND THE CITY OF SAN JOSE.
- ALL FILL MATERIALS SHALL BE DENSIFIED SO AS TO PRODUCE A DENSITY NOT LESS THAN 80% RELATIVE COMPACTION BASED UPON ASTM TEST DESIGNATION D1557. FIELD DENSITY TEST WILL BE PERFORMED IN ACCORDANCE WITH ASTM TEST DESIGNATION 2922 AND 3017. THE LOCATION AND FREQUENCY OF THE FIELD DENSITY TEST WILL BE AS DETERMINED BY THE SOIL ENGINEER. THE RESULTS OF THESE TEST AND COMPLIANCE WITH THE SPECIFICATIONS WILL BE THE BASIS UPON WHICH SATISFACTORY COMPLETION OF THE WORK WILL BE JUDGED BY THE SOIL ENGINEER. ALL CUT AND FILL SLOPES SHALL BE CONSTRUCTED AS SHOWN ON PLANS, BUT NO STEEPER THAN TWO (2) HORIZONTAL TO ONE (1) VERTICAL.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SATISFACTORY COMPLETION OF ALL THE EARTHWORK IN ACCORDANCE WITH THESE PLANS AND SPECIFICATIONS. NO DEVIATION FROM THESE SPECIFICATIONS SHALL BE MADE EXCEPT UPON WRITTEN APPROVAL BY THE SOILS ENGINEER. BOTH CUT AND FILL AREAS SHALL BE SURFACE COMPLETED TO THE SATISFACTION OF THE SOILS ENGINEER AT THE CONCLUSION OF ALL GRADING OPERATIONS AND PRIOR TO FINAL ACCEPTANCE. THE CONTRACTOR SHALL NOTIFY THE SOILS ENGINEER AT LEAST TWO (2) WORKING DAYS PRIOR TO DOING ANY SITE GRADING AND EARTHWORK INCLUDING CLEARING.

3. CLEARING AND GRUBBING

- THE CONTRACTOR SHALL ACCEPT THE SITE IN ITS PRESENT CONDITION. ALL EXISTING PUBLIC IMPROVEMENTS SHALL BE PROTECTED. ANY IMPROVEMENTS DAMAGED SHALL BE REPLACED BY THE CONTRACTOR AS DIRECTED BY THE COUNTY OF ALAMEDA WITH NO EXTRA COMPENSATION.
- ALL ABANDONED BUILDINGS AND FOUNDATIONS, TREE (EXCEPT THOSE SPECIFIED TO REMAIN FOR LANDSCAPING PURPOSES), FENCES, VEGETATION AND ANY SURFACE DEBRIS SHALL BE REMOVED AND DISPOSED OF OFF THE SITE BY THE CONTRACTOR.
- ALL ABANDONED SEPTIC TANKS AND ANY OTHER SUBSURFACE STRUCTURES EXISTING IN PROPOSED DEVELOPMENT AREAS SHALL BE REMOVED PRIOR TO ANY GRADING OR FILL OPERATION. ALL APPURTENANT DRAIN FIELDS AND OTHER CONNECTING LINES MUST ALSO BE TOTALLY REMOVED.
- ALL ABANDONED UNDERGROUND IRRIGATION OR UTILITY LINES SHALL BE REMOVED OR DEMOLISHED. THE APPROPRIATE FINAL DISPOSITION OF SUCH LINES DEPEND UPON THEIR DEPTH AND LOCATION AND THE METHOD OF REMOVAL OR DEMOLITION SHALL BE DETERMINED BY THE SOILS ENGINEER. ONE OF THE FOLLOWING METHODS WILL BE USED:
  - EXCAVATE AND TOTALLY REMOVE THE UTILITY LINE FROM THE TRENCH.
  - EXCAVATE AND CRUSH THE UTILITY LINE IN THE TRENCH.
  - CAP THE ENDS OF THE UTILITY LINE WITH CONCRETE TO PREVENT THE ENTRANCE OF WATER. THE LOCATIONS AT WHICH THE UTILITY LINE WILL BE CAPPED WILL BE DETERMINED BY THE COUNTY OF ALAMEDA ENGINEER. THE LENGTH OF THE CAP SHALL NOT BE LESS THAN FIVE FEET, AND THE CONCRETED MIX EMPLOYED SHALL HAVE MINIMUM SHRINKAGE.

4. SITE PREPARATION AND STRIPPING

- ALL SURFACE ORGANICS SHALL BE STRIPPED AND REMOVED FROM BUILDING PADS, AREAS TO RECEIVE COMPACTED FILL AND PAVEMENT AREAS.
- UPON THE COMPLETION OF THE ORGANIC STRIPPING OPERATION, THE GROUND SURFACE (NATIVE SOIL SUBGRADE) OVER THE ENTIRE AREA OF ALL BUILDING PADS, STREET AND PAVEMENT AREAS AND ALL AREAS TO RECEIVE COMPACTED FILL SHALL BE PLOWED OR SCARIFIED UNTIL THE SURFACE IS FREE OF RUTS, HUMMOCKS OR OTHER UNEVEN FEATURES WHICH MAY INHIBIT UNIFORM SOIL COMPACTION. THE GROUND SURFACE SHALL THEN BE DISCED OR BLADED TO A DEPTH OF AT LEAST 6 INCHES. UPON ENGINEER'S SATISFACTION, THE NEW SURFACE SHALL BE WATER CONDITIONED AND REDCOMPACTED PER REQUIREMENTS FOR COMPACTING FILL MATERIAL.

5. EXCAVATION

- UPON COMPLETION OF THE CLEARING AND GRUBBING, SITE PREPARATION AND STRIPPING, THE CONTRACTOR SHALL MAKE EXCAVATIONS TO LINES AND GRADES NOTED ON THE PLAN WHERE REQUIRED BY THE SOILS ENGINEER. UNACCEPTABLE NATIVE SOILS OR UNENGINEERED FILL SHALL BE OVER EXCAVATED BELOW THE DESIGN GRADE. CONTACT CITY ENGINEER FOR DISCUSSION OF OVER EXCAVATION OF THE UNACCEPTABLE MATERIAL. RESULTING GROUND LINE SHALL BE SCARIFIED, MOISTURE-CONDITIONED AND REDCOMPACTED AS SPECIFIED IN SECTION 4 OF THESE SPECIFICATIONS. COMPACTED FILL MATERIAL SHALL BE PLACED TO BRING GROUND LEVEL BACK TO DESIGN GRADE.
- EXCAVATED MATERIALS SUITABLE FOR COMPACTED FILL MATERIAL SHALL BE UTILIZED IN MAKING THE REQUIRED COMPACTED FILLS. THOSE NATIVE MATERIALS CONSIDERED UNSUITABLE BY THE SOILS ENGINEER SHALL BE DISPOSED OF OFF THE SITE BY THE CONTRACTOR.

6. PLACING, SPREADING AND COMPACTING FILL MATERIAL

A. FILL MATERIALS

THE MATERIALS PROPOSED FOR USE AS COMPACTED FILL SHALL BE APPROVED BY THE SOILS ENGINEER BEFORE COMMENCEMENT OF GRADING OPERATIONS. THE NATIVE MATERIAL IS CONSIDERED SUITABLE FOR FILL; HOWEVER, ANY NATIVE MATERIAL DESIGNATED UNSUITABLE BY THE SOILS ENGINEER SHALL BE REMOVED FROM THE SITE BY THE CONTRACTOR. ANY IMPORTED MATERIAL SHALL BE APPROVED FOR USE BY THE SOILS ENGINEER. IN WRITING, BEFORE BEING IMPORTED TO THE SITE AND SHALL POSSESS SUFFICIENT FINES TO PROVIDE A COMPACTIBLE SOIL MATRIX AND SHALL BE FREE OF VEGETATIVE AND ORGANIC MATTER AND OTHER DELETERIOUS MATERIALS. ALL FILL VOIDS SHALL BE FILLED AND PROPERLY COMPACTED. NO ROCKS LARGER THAN THREE INCHES IN DIAMETER SHALL BE PERMITTED.

B. FILL CONSTRUCTION

THE SOILS ENGINEER SHALL APPROVE THE NATIVE SOIL SUBGRADE BEFORE PLACEMENT OF ANY COMPACTED FILL MATERIAL. UNACCEPTABLE NATIVE SOIL SHALL BE REMOVED AS DIRECTED BY THE SOILS ENGINEER. THE RESULTING GROUND LINE SHALL BE SCARIFIED MOISTURE CONDITIONED AND REDCOMPACTED AS SPECIFIED IN SECTION 4 OF THESE SPECIFICATIONS. COMPACTED FILL MATERIAL SHALL BE PLACED TO BRING GROUND LEVEL BACK TO DESIGN GRADE. GROUND PREPARATION SHALL BE FOLLOWED CLOSELY BY FILL PLACEMENT TO PREVENT DRYING OUT OF THE SUBSOIL BEFORE PLACEMENT OF THE FILL.

THE APPROVED FILL MATERIALS SHALL BE PLACED IN UNIFORM HORIZONTAL LAYERS NO THICKER THAN 12" IN LOOSE THICKNESS. LAYERS SHALL BE SPREAD EVENLY AND SHALL BE THOROUGHLY BLADE MIXED DURING THE SPREADING TO ENSURE UNIFORMITY OF MATERIAL IN EACH LAYER. THE SCARIFIED SUBGRADE AND FILL MATERIAL SHALL BE MOISTURE CONDITIONED TO AT LEAST OPTIMUM MOISTURE. WHEN THE MOISTURE CONTENT OF THE FILL IS BELOW THAT SPECIFIED, WATER SHALL BE ADDED UNTIL THE MOISTURE DURING THE COMPACTION PROCESS. WHEN THE MOISTURE CONTENT OF THE FILL IS ABOVE THAT SPECIFIED, THE FILL MATERIAL SHALL BE AERATED BY BLADING OR OTHER SATISFACTORY METHODS UNTIL THE MOISTURE CONTENT IS AS SPECIFIED.

AFTER EACH LAYER HAS BEEN PLACED, MOVED, SPREAD EVENLY AND MOISTURE CONDITIONED, IT SHALL BE COMPACTED TO AT LEAST THE SPECIFIED DENSITY.

THE FILL OPERATION SHALL BE CONTINUED IN COMPACTED LAYERS AS SPECIFIED ABOVE UNTIL THE FILL HAS BEEN BROUGHT TO THE FINISHED SLOPES AND GRADES AS SHOWN ON THE PLANS. NO LAYER SHALL BE ALLOWED TO DRY OUT BEFORE SUBSEQUENT LAYERS ARE PLACED.

COMPACTION EQUIPMENT SHALL BE OF SUCH DESIGN THAT IT WILL BE ABLE TO COMPACT THE FILL TO THE SPECIFIED MINIMUM COMPACTION WITHIN THE SPECIFIED MOISTURE CONTENT RANGE. COMPACTION OF EACH LAYER SHALL BE CONTINUOUS OVER ITS ENTIRE AREA UNTIL THE REQUIRED MINIMUM DENSITY HAS BEEN OBTAINED.

7. CUT OR FILL SLOPES

ALL CONSTRUCTED SLOPES, BOTH CUT AND FILL, SHALL BE NO STEEPER THAN 2 TO 1 (HORIZONTAL TO VERTICAL). DURING THE GRADING OPERATION, COMPACTED FILL SLOPES SHALL BE CHECKED BY AT LEAST ONE FOOT HORIZONTAL AT THE COMPLETION OF THE GRADING OPERATIONS. THE EXCESS FILL EXISTING ON THE SLOPES SHALL BE BLADED OFF TO CREATE THE FINISHED SLOPE EMBANKMENT. ALL CUT AND FILL SLOPES SHALL BE TRACK WALKED AFTER BEING BROUGHT TO FINISH GRADE AND THEN BE PLANTED WITH EROSION CONTROL SLOPE PLANTING. THE SOILS ENGINEER SHALL REVIEW ALL CUT SLOPES TO DETERMINE IF ANY ADVERSE GEOLOGIC CONDITIONS ARE EXPOSED. IF SUCH CONDITIONS DO OCCUR, THE SOILS ENGINEER SHALL RECOMMEND THE APPROPRIATE MITIGATION MEASURES AT THE TIME OF THEIR DETECTION.

8. SEASONAL LIMITS AND DRAINAGE CONTROL

FILL MATERIALS SHALL NOT BE PLACED, SPREAD OR COMPACTED WHILE IT IS AT AN UNSUITABLY HIGH MOISTURE CONTENT OR DURING OTHERWISE UNFAVORABLE CONDITIONS. WHEN THE WORK IS INTERRUPTED FOR ANY REASON THE FILL OPERATIONS SHALL NOT BE RESUMED UNTIL FIELD TEST PERFORMED BY THE SOILS ENGINEER INDICATE THAT THE MOISTURE CONDITIONS IN AREAS TO BE FILLED ARE AS PREVIOUSLY SPECIFIED. ALL EARTH MOVING AND WORKING OPERATIONS SHALL BE CONTROLLED TO PREVENT WATER FROM RUNNING INTO EXCAVATED AREAS. ALL EXCESS WATER SHALL BE PROMPTLY REMOVED AND THE SITE KEPT DRY.

9. DUST CONTROL

THE CONTRACTOR SHALL TAKE ALL STEPS NECESSARY FOR THE ALLEVATION OR PREVENTION OF ANY DUST NUISANCE ON OR ABOUT THE SITE CAUSED BY THE CONTRACTOR'S OPERATION EITHER DURING THE PERFORMANCE OF THE GRADING OR RESULTING FROM THE CONDITION IN WHICH THE CONTRACTOR LEAVES THE SITE. THE CONTRACTOR SHALL ASSUME ALL LIABILITY INCLUDING COURT COST OF CO-DEFENDANTS FOR ALL CLAIMS RELATED TO DUST OR WIND-BLOWN MATERIALS ATTRIBUTABLE TO HIS WORK. COST FOR THIS ITEM OF WORK IS TO BE INCLUDED IN THE EXCAVATION ITEM AND NO ADDITIONAL COMPENSATION SHALL BE ALLOWED.

10. INDEMNITY

THE CONTRACTOR WILL HOLD HARMLESS, INDEMNIFY AND DEFEND THE ENGINEER, THE OWNER AND HIS CONSULTANTS AND EACH OF THEIR OFFICERS AND EMPLOYEES AND AGENTS, FROM ANY AND ALL LIABILITY CLAIMS, LOSSES OR DAMAGE ARISING OR ALLEGED TO HEREIN, BUT NOT INCLUDING THE SOLE NEGLIGENCE OF THE OWNER, THE ARCHITECT, THE ENGINEER AND HIS CONSULTANTS AND EACH OF THEIR OFFICERS AND EMPLOYEES AND AGENTS.

11. SAFETY

IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, THE CONTRACTOR WILL BE SOLELY AND COMPLETELY RESPONSIBLE FOR CONDITIONS OF THE JOB SITE, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY DURING PERFORMANCE OF THE WORK. THIS REQUIREMENT WILL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.

THE DUTY OF THE ENGINEERS TO CONDUCT CONSTRUCTION REVIEW OF THE CONTRACTOR'S PERFORMANCE IS NOT INTENDED TO INCLUDE REVIEW OF THE ADEQUACY OF THE CONTRACTOR'S SAFETY MEASURES, IN, ON OR NEAR THE CONSTRUCTION SITE.

12. GUARANTEE

NEITHER THE FINAL PAYMENT, NOR THE PROVISIONS IN THE CONTRACT, NOR PARTIAL, NOR ENTIRE USE OR OCCUPANCY OF THE PREMISES BY THE OWNER SHALL CONSTITUTE AN ACCEPTANCE OF THE WORK NOT DONE IN ACCORDANCE WITH THE CONTRACT OR RELIEVES THE CONTRACTOR OF LIABILITY IN RESPECT TO ANY EXPRESS WARRANTIES OR RESPONSIBILITY FOR FAULTY MATERIAL OR WORKMANSHIP.

THE CONTRACTOR SHALL REMEDY ANY DEFECTS IN WORK AND PAY FOR ANY DAMAGE TO OTHER WORK RESULTING THEREFROM WHICH SHALL APPEAR WITHIN A PERIOD OF ONE (1) CALENDAR YEAR FROM THE DATE OF FINAL ACCEPTANCE OF THE WORK.

13. TRENCH BACKFILL

EITHER THE ON-SITE INORGANIC SOIL OR APPROVED IMPORTED SOIL MAY BE USED AS TRENCH BACKFILL. THE BACKFILL MATERIAL SHALL BE MOISTURE CONDITIONED PER THESE SPECIFICATIONS AND SHALL BE PLACED IN LIFTS OF NOT MORE THAN SIX INCHES IN HORIZONTAL UNCOMPACTED LAYERS AND BE COMPACTED BY MECHANICAL MEANS TO A MINIMUM OF 80% RELATIVE COMPACTION. IMPORTED SAND MAY BE USED FOR TRENCH BACKFILL MATERIAL PROVIDED IT IS COMPACTED TO AT LEAST 80% RELATIVE COMPACTION. WATER JETTING ASSOCIATED WITH COMPACTION USING VIBRATORY EQUIPMENT WILL BE PERMITTED ONLY WITH IMPORTED SAND BACKFILL. WITH THE APPROVAL OF THE SOILS ENGINEER, ALL PIPES SHALL BE BEDDED WITH SAND EXTENDING FROM THE TRENCH BOTTOM TO TWELVE INCHES ABOVE THE PIPE. SAND BEDDING IS TO BE COMPACTED AS SPECIFIED ABOVE FOR SAND BACKFILL.

14. EROSION CONTROL

- ALL GRADING, EROSION AND SEDIMENT CONTROL AND RELATED WORK UNDERTAKEN ON THIS SITE IS SUBJECT TO ALL TERMS AND CONDITIONS OF THE COUNTY GRADING ORDINANCE AND MADE A PART HEREOF BY REFERENCE.
- THE CONTRACTOR WILL BE LIABLE FOR ANY AND ALL DAMAGES TO ANY PUBLICLY OWNED AND MAINTAINED ROAD CAUSED BY THE AFORESAID CONTRACTOR'S GRADING ACTIVITIES, AND SHALL BE RESPONSIBLE FOR THE CLEANUP OF ANY MATERIAL SPILLED ON ANY PUBLIC ROAD ON THE HAUL ROUTE.
- THE EROSION CONTROL MEASURES ARE TO BE OPERABLE DURING THE RAINY SEASON, OCTOBER FIRST TO APRIL THIRTIETH. EROSION CONTROL PLANTING IS TO BE COMPLETED BY OCTOBER FIRST. NO GRADING OR UTILITY TRENCHING SHALL OCCUR BETWEEN OCTOBER FIRST AND APRIL THIRTIETH UNLESS AUTHORIZED BY THE COUNTY OF ALAMEDA ENGINEER.
- ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED UNTIL DISTURBED AREAS ARE STABILIZED AND CHANGES TO THIS EROSION AND SEDIMENT CONTROL PLAN SHALL BE MADE TO MEET FIELD CONDITIONS ONLY WITH THE APPROVAL OF OR AT THE DIRECTION OF THE SOILS ENGINEER.
- DURING THE RAINY SEASON, ALL PAVED AREAS SHALL BE KEPT CLEAR OF EARTH MATERIAL AND DEBRIS. THE SITE SHALL BE MAINTAINED SO AS TO MINIMIZE SEDIMENT-LODGE RUNOFF TO ANY STORM DRAINAGE SYSTEM.
- ALL EROSION CONTROL FACILITIES MUST BE INSPECTED AND REPAIRED AT THE END OF EACH WORKING DAY DURING THE RAINY SEASON.
- WHEN NO LONGER NECESSARY AND PRIOR TO FINAL ACCEPTANCE OF DEVELOPMENT, SEDIMENT BASINS SHALL BE REMOVED OR OTHERWISE DEACTIVATED AS REQUIRED BY THE COUNTY OF ALAMEDA.
- A CONSTRUCTION ENTRANCE SHALL BE PROVIDED AT ANY POINT OF EGRESS FROM THE SITE TO ROADWAY. A CONSTRUCTION ENTRANCE SHOULD BE COMPOSED OF COARSE DRAIN ROCK (2" TO 3" MINIMUM DIAMETER) AT LEAST EIGHT INCHES THICK BY FIFTY (50) FEET LONG BY TWENTY (20) FEET WIDE UNLESS SHOWN OTHERWISE ON PLAN AND SHALL BE MAINTAINED UNTIL THE SITE IS PAVED.
- ALL AREAS SPECIFIED FOR HYDROSEEDING SHALL BE NOZZLE PLANTED WITH STABILIZATION MATERIAL CONSISTING OF FIBER, SEED, FERTILIZER AND WATER, MIXED AND APPLIED IN THE FOLLOWING PROPORTIONS:

FIBER, 2000 LBS/ACRE  
SEED, 200 LBS/ACRE (SEE NOTE 4, BELOW)  
FERTILIZER (11-8-4), 500 LBS/ACRE  
WATER, AS REQUIRED FOR APPLICATION
- SEED MIX SHALL BE PER CALTRANS STANDARDS.
- WATER UTILIZED IN THE STABILIZATION MATERIAL SHALL BE OF SUCH QUALITY THAT IT WILL PROMOTE GERMINATION AND STIMULATE GROWTH OF PLANTS. IT SHALL BE FREE OF POLLUTANT MATERIALS AND WEED SEED.
- HYDROSEEDING SHALL CONFORM TO THE PROVISIONS OF SECTION 20, EROSION CONTROL AND HIGHWAY PLANTING, OF THE STANDARD SPECIFICATIONS OF THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AS LAST REVISED.
- A DISPERSING AGENT MAY BE ADDED TO THE HYDROSEEDING MATERIAL, PROVIDED THAT THE CONTRACTOR FURNISHES SUITABLE EVIDENCE THAT THE ADDITIVE WILL NOT ADVERSELY AFFECT THE PERFORMANCE OF THE SEEDING MIXTURE.
- STABILIZATION MATERIALS SHALL BE APPLIED AS SOON AS PRACTICABLE AFTER COMPLETION OF GRADING OPERATIONS AND PRIOR TO THE ONSET OF WINTER RAINS, OR AT SUCH OTHER TIME AS DIRECTED BY THE COUNTY ENGINEER. THE MATERIAL SHALL BE APPLIED BEFORE INSTALLATION OF OTHER LANDSCAPING MATERIALS SUCH AS TREES, SHRUBS AND GROUND COVERS.
- THE STABILIZATION MATERIAL SHALL BE APPLIED WITHIN 4-HOURS AFTER MOVED, MOVED MATERIAL NOT USED WITHIN 4-HOURS SHALL BE REMOVED FROM THE SITE.
- THE CONTRACTOR SHALL MAINTAIN THE SOIL STABILIZATION MATERIAL AFTER PLACEMENT. THE COUNTY ENGINEER MAY REQUIRE SPRAY APPLICATION OF WATER OR OTHER MAINTENANCE ACTIVITIES TO ASSURE THE EFFECTIVENESS OF THE STABILIZATION PROCESS. APPLICATION OF WATER SHALL BE ACCOMPLISHED USING NOZZLES THAT PRODUCE A SPRAY THAT DOES NOT CONCENTRATE OR WASH AWAY THE STABILIZATION MATERIALS.

15. CLEANUP

THE CONTRACTOR MUST MAINTAIN THE SITE CLEAN, SAFE AND IN USABLE CONDITION. ANY SPILLS OF SOIL, ROCK OR CONSTRUCTION MATERIAL MUST BE REMOVED FROM THE SITE BY THE CONTRACTOR DURING CONSTRUCTION AND UPON COMPLETION OF THE PROJECT. COST FOR THIS ITEM OF WORK SHALL BE INCLUDED IN THE EXCAVATION AND COMPACTION ITEM AND NO ADDITIONAL COMPENSATION SHALL BE ALLOWED.

NOTE:  
THESE NOTES ARE INTENDED TO BE USED AS A GENERAL GUIDELINE. THE REFERENCED SOILS REPORT FOR THE PROJECT AND GOVERNING AGENCY GRADING ORDINANCE SHALL SUPERSEDE THESE NOTES. THE SOILS ENGINEER MAY MAKE ON-SITE RECOMMENDATIONS DURING GRADING OPERATIONS.



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NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

APN: 029-06-039

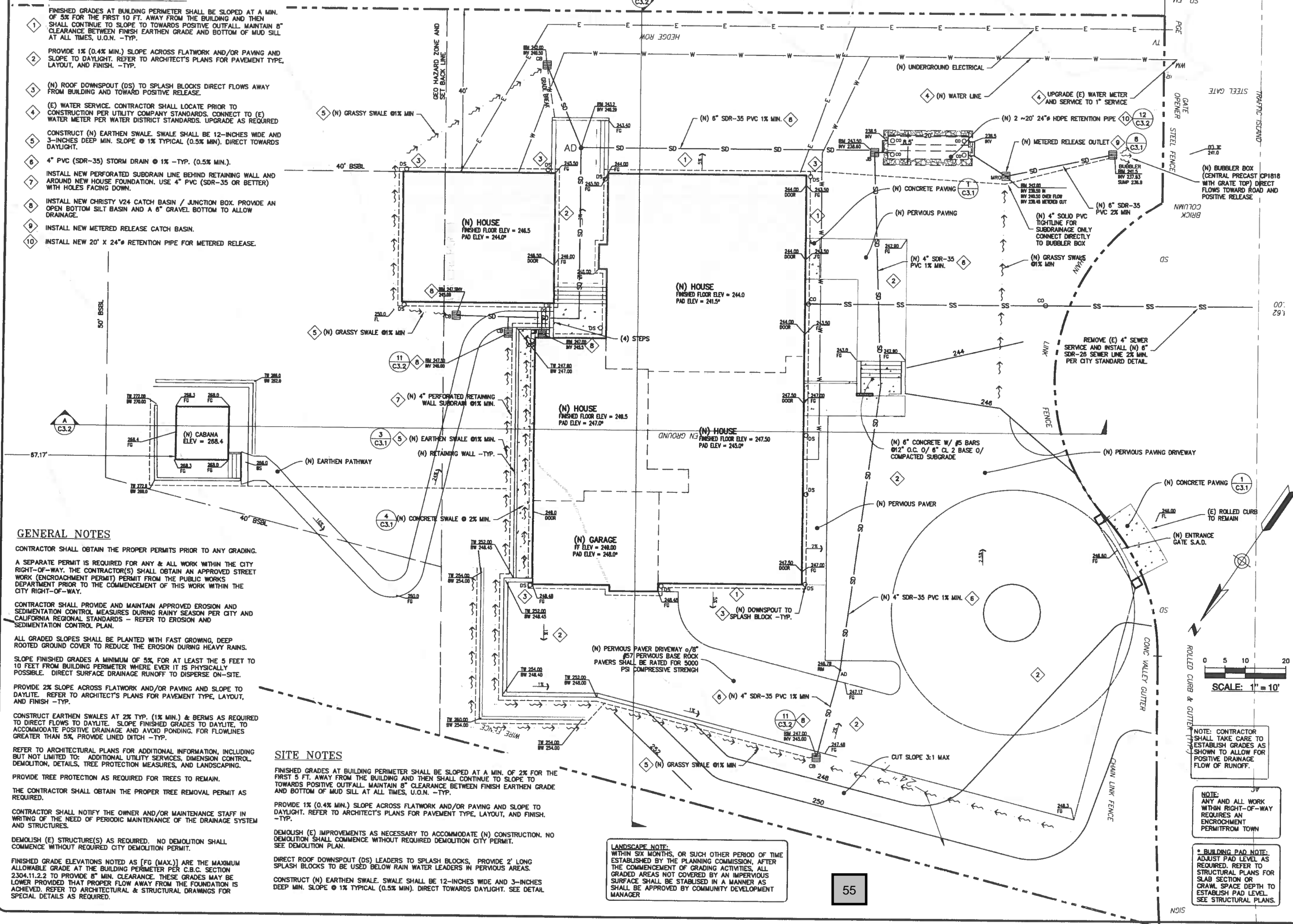
SANTA CLARA COUNTY

GRADING  
SPECIFICATIONS

-	-
-	-
-	-
-	-
-	-
REVISIONS	BY
JOB NO:	218043
DATE:	2-1-19
SCALE:	AS NOTED
DESIGN BY:	WCC
DRAWN BY:	BR
SHEET NO:	

CO.2

- 1 FINISHED GRADES AT BUILDING PERIMETER SHALL BE SLOPED AT A MIN. OF 5% FOR THE FIRST 10 FT. AWAY FROM THE BUILDING AND THEN SHALL CONTINUE TO SLOPE TO TOWARDS POSITIVE OUTFALL. MAINTAIN 6" CLEARANCE BETWEEN FINISH EARTHEN GRADE AND BOTTOM OF MUD SILL AT ALL TIMES, U.O.N. -TYP.
- 2 PROVIDE 1% (0.4% MIN.) SLOPE ACROSS FLATWORK AND/OR PAVING AND SLOPE TO DAYLIGHT. REFER TO ARCHITECT'S PLANS FOR PAVEMENT TYPE, LAYOUT, AND FINISH. -TYP.
- 3 (N) ROOF DOWNSPOUT (DS) TO SPLASH BLOCKS DIRECT FLOWS AWAY FROM BUILDING AND TOWARD POSITIVE RELEASE.
- 4 (E) WATER SERVICE. CONTRACTOR SHALL LOCATE PRIOR TO CONSTRUCTION PER UTILITY COMPANY STANDARDS. CONNECT TO (E) WATER METER PER WATER DISTRICT STANDARDS. UPGRADE AS REQUIRED.
- 5 CONSTRUCT (N) EARTHEN SWALE. SWALE SHALL BE 12-INCHES WIDE AND 3-INCHES DEEP MIN. SLOPE @ 1% TYPICAL (0.5% MIN). DIRECT TOWARDS DAYLIGHT.
- 6 4" PVC (SDR-35) STORM DRAIN @ 1% -TYP. (0.5% MIN.).
- 7 INSTALL NEW PERFORATED SUBDRAIN LINE BEHIND RETAINING WALL AND AROUND NEW HOUSE FOUNDATION. USE 4" PVC (SDR-35 OR BETTER) WITH HOLES FACING DOWN.
- 8 INSTALL NEW CHRISTY V24 CATCH BASIN / JUNCTION BOX. PROVIDE AN OPEN BOTTOM SILT BASIN AND A 6" GRAVEL BOTTOM TO ALLOW DRAINAGE.
- 9 INSTALL NEW METERED RELEASE CATCH BASIN.
- 10 INSTALL NEW 20" X 24" RETENTION PIPE FOR METERED RELEASE.



CONTRACTOR SHALL OBTAIN THE PROPER TREE REMOVAL PERMIT AS REQUIRED.

A SEPARATE PERMIT IS REQUIRED FOR ANY & ALL WORK WITHIN THE CITY RIGHT-OF-WAY. THE CONTRACTOR(S) SHALL OBTAIN AN APPROVED STREET WORK (ENCROACHMENT PERMIT) PERMIT FROM THE PUBLIC WORKS DEPARTMENT PRIOR TO THE COMMENCEMENT OF THIS WORK WITHIN THE CITY RIGHT-OF-WAY.

CONTRACTOR SHALL PROVIDE AND MAINTAIN APPROVED EROSION AND SEDIMENTATION CONTROL MEASURES DURING RAINY SEASON PER CITY AND CALIFORNIA REGIONAL STANDARDS - REFER TO EROSION AND SEDIMENTATION CONTROL PLAN.

ALL GRADED SLOPES SHALL BE PLANTED WITH FAST GROWING, DEEP ROOTED GRASS COVER TO REDUCE THE EROSION DURING HEAVY RAINS.

SLOPE FINISHED GRADES A MINIMUM OF 5% FOR AT LEAST THE 5 FEET TO 10 FEET FROM BUILDING PERIMETER WHERE EVER IT IS PHYSICALLY POSSIBLE. DIRECT SURFACE DRAINAGE RUNOFF TO DISPERSE ON-SITE.

PROVIDE 2% SLOPE ACROSS FLATWORK AND/OR PAVING AND SLOPE TO DRYTILE. REFER TO ARCHITECT'S PLANS FOR PAVEMENT TYPE, LAYOUT, AND FINISH -TYP.

CONSTRUCT EARTHEN SWALES AT 2% TYP. (1% MIN.) & BERMS AS REQUIRED TO DIRECT FLOWS TO DRYTILE. SLOPE FINISHED GRADES TO DRYTILE, TO ACCOMMODATE POSITIVE DRAINAGE AND AVOID PONDING. FOR FLOWLINES GREATER THAN 5% PROVIDE LINED DITCH -TYP.

REFER TO ARCHITECTURAL PLANS FOR ADDITIONAL INFORMATION, INCLUDING BUT NOT LIMITED TO: ADDITIONAL UTILITY SERVICES, DIMENSION CONTROL, DEMOLITION, DETAILS, TREE PROTECTION MEASURES, AND LANDSCAPING.

PROVIDE TREE PROTECTION AS REQUIRED FOR TREES TO REMAIN.

THE CONTRACTOR SHALL OBTAIN THE PROPER TREE REMOVAL PERMIT AS REQUIRED.

CONTRACTOR SHALL NOTIFY THE OWNER AND/OR MAINTENANCE STAFF IN WRITING OF THE NEED OF PERIODIC MAINTENANCE OF THE DRAINAGE SYSTEM AND STRUCTURES.

DEMOLISH (E) STRUCTURE(S) AS REQUIRED. NO DEMOLITION SHALL COMMENCE WITHOUT REQUIRED CITY DEMOLITION PERMIT.

FINISHED GRADE ELEVATIONS NOTED AS [FG (MAX.)] ARE THE MAXIMUM ALLOWABLE GRADE AT THE BUILDING PERIMETER PER C.B.C. SECTION 2304.11.2.2 TO PROVIDE 8" MIN. CLEARANCE. THESE GRADES MAY BE LOWER PROVIDED THAT PROPER FLOW AWAY FROM THE FOUNDATION IS ACHIEVED. REFER TO ARCHITECTURAL & STRUCTURAL DRAWINGS FOR SPECIAL DETAILS AS REQUIRED.

FINISHED GRADES AT BUILDING PERIMETER SHALL BE SLOPED AT A MIN. OF 2% FOR THE FIRST 5 FT. AWAY FROM THE BUILDING AND THEN SHALL CONTINUE TO SLOPE TO TOWARDS POSITIVE OUTFALL. MAINTAIN 8" CLEARANCE BETWEEN FINISH EARTHEN GRADE AND BOTTOM OF MUD SILL AT ALL TIMES, U.O.N. -TYP.

PROVIDE 1% (0.4% MIN.) SLOPE ACROSS FLATWORK AND/OR PAVING AND SLOPE TO DAYLIGHT. REFER TO ARCHITECT'S PLANS FOR PAVEMENT TYPE, LAYOUT, AND FINISH. -TYP.

DEMOLISH (E) IMPROVEMENTS AS NECESSARY TO ACCOMMODATE (N) CONSTRUCTION. NO DEMOLITION SHALL COMMENCE WITHOUT REQUIRED DEMOLITION CITY PERMIT. SEE DEMOLITION PLAN.

DIRECT ROOF DOWNSPOUT (DS) LEADERS TO SPLASH BLOCKS. PROVIDE 2' LONG SPLASH BLOCKS TO BE USED BELOW RAIN WATER LEADERS IN PERVIOUS AREAS.

CONSTRUCT (N) EARTHEN SWALE. SWALE SHALL BE 12-INCHES WIDE AND 3-INCHES DEEP MIN. SLOPE @ 1% TYPICAL (0.5% MIN). DIRECT TOWARDS DAYLIGHT. SEE DETAIL

**LANDSCAPE NOTE:**  
WITHIN SIX MONTHS, OR SUCH OTHER PERIOD OF TIME  
ESTABLISHED BY THE PLANNING COMMISSION, AFTER  
THE COMMENCEMENT OF GRADING ACTIVITIES, ALL  
GRADED AREAS NOT COVERED BY AN IMPERVIOUS  
SURFACE SHALL BE STABILIZED IN A MANNER AS  
SHALL BE APPROVED BY COMMUNITY DEVELOPMENT  
MANAGER

NOTE: CONTRACTOR SHALL TAKE CARE TO ESTABLISH GRADES AS SHOWN TO ALLOW FOR POSITIVE DRAINAGE FLOW OF RUNOFF.

NOTE:  
ANY AND ALL WORK  
WITHIN RIGHT-OF-WAY  
REQUIRES AN  
ENCROCHMENT  
PERMIT FROM TOWN

\* **BUILDING PAD NOTE:**  
ADJUST PAD LEVEL AS  
REQUIRED. REFER TO  
STRUCTURAL PLANS FOR  
SLAB SECTION OR  
CRAWL SPACE DEPTH TO  
ESTABLISH PAD LEVEL.  
SEE STRUCTURAL PLANS.



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NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

APN: 029-06-038

## GRADING & DRAINAGE PLAN

REVISIONS	BY
JOB NO:	218043
DATE:	5-12-19
SCALE:	AS NOTED
DESIGN BY:	WCC
DRAWN BY:	DR
SHEET NO:	

## C2.1



CLARK CIVIL ENGINEERING  
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NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA  
SANTA CLARA COUNTY

APR: 029-06-038

## DETAILS

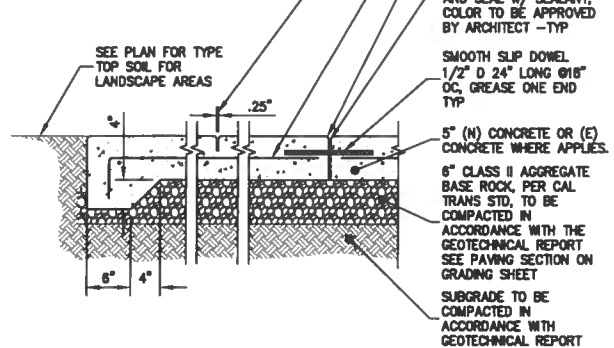
REVISIONS	BY

JOB NO: 218043  
DATE: 2-1-19  
SCALE: AS NOTED  
DESIGN BY: WCC  
DRAWN BY: DR  
SHEET NO:

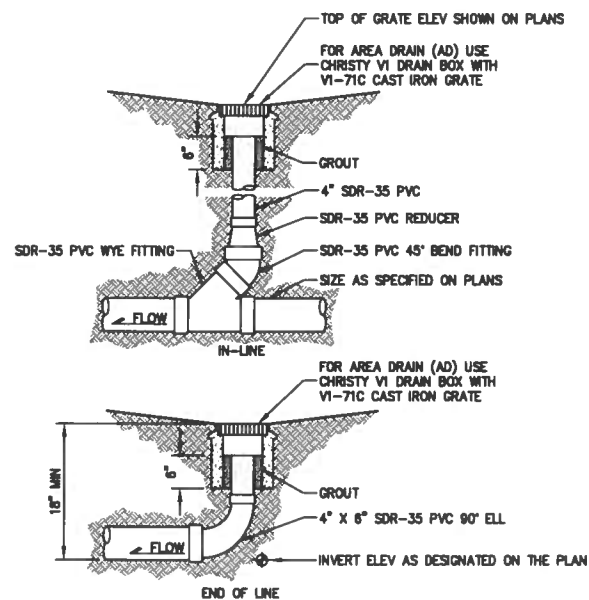
**C3.1**

### NOTES:

1. SLOPE ALL CONCRETE TO DRAIN 1% MIN.
2. SEE LANDSCAPE OR ARCHITECTURAL PLANS FOR CONCRETE COLORS AND FINISHES.
3. EASE ALL EDGES R=1/2"
4. FELT SHALL BE NON-ASPHALTIC IMPREGNATED.

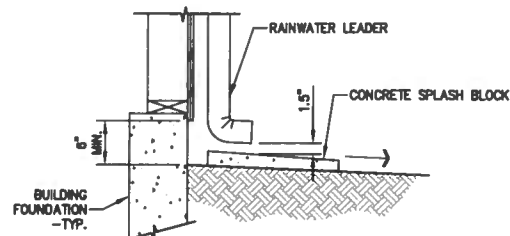


1 CONCRETE PAVING  
C3.1 NTS

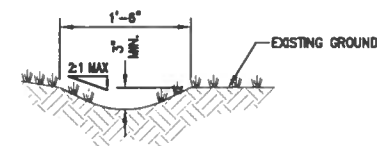


6 AREA DRAIN  
C3.1 NTS

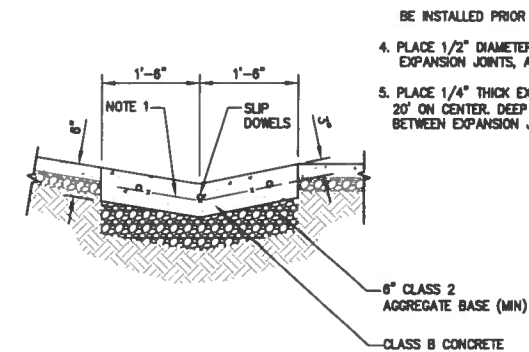
NOTE:  
GLUED FITTINGS MAY BE SUBSTITUTED FOR GASKETED FITTINGS AT THE OPTION OF THE INSTALLATION CONTRACTOR.



2 RAIN WATER LEADER TO CONCRETE SPLASH BLOCK  
C3.1 NTS

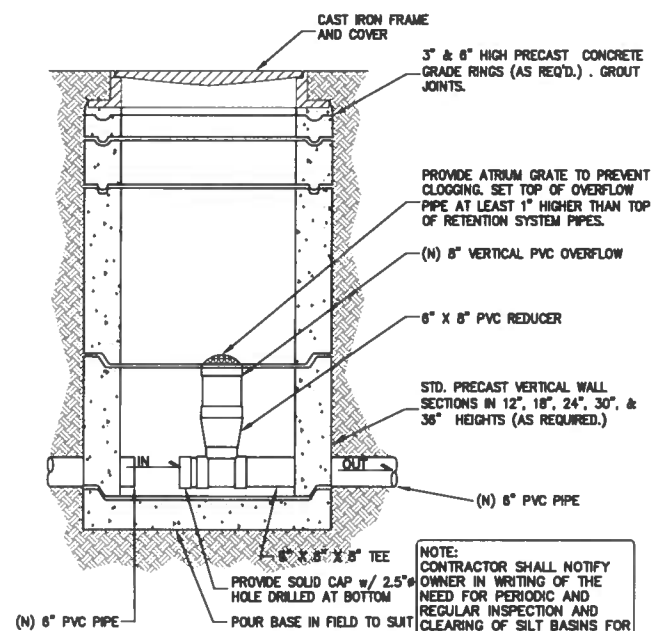


3 EARTHEN SWALE DETAIL  
C3.1 NTS



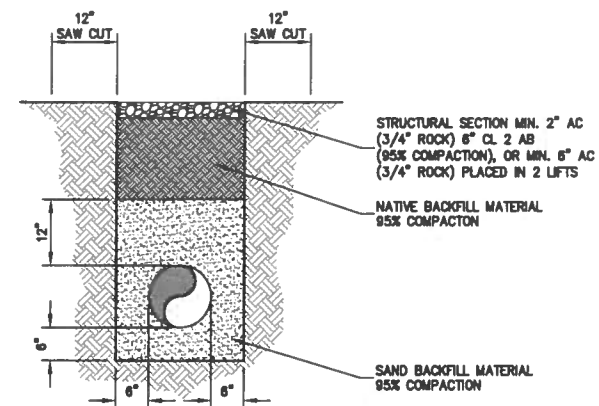
4 CONCRETE SWALE  
C3.1 NTS

- BE INSTALLED PRIOR TO P
4. PLACE 1/2" DIAMETER X 11' EXPANSION JOINTS, AS SH
  5. PLACE 1/4" THICK EXPANS 20' ON CENTER. DEEP SCOF BETWEEN EXPANSION JOINTS

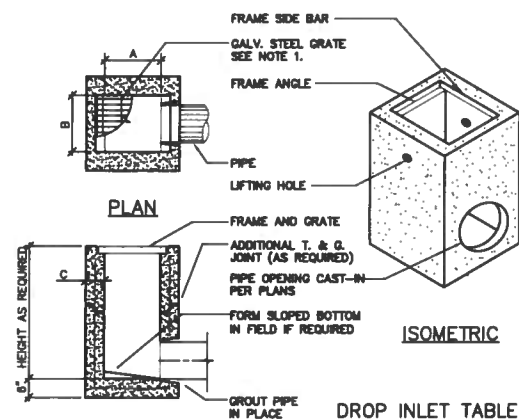


8 METERED RELEASE OUTLET  
C3.1 NTS

NOTE:  
CONTRACTOR SHALL NOTIFY OWNER IN WRITING OF THE NEED FOR PERIODIC AND REGULAR INSPECTION AND CLEARING OF SILT BASINS FOR LONG TERM PERFORMANCE.



9 TRENCH BACKFILL  
C3.2 NTS



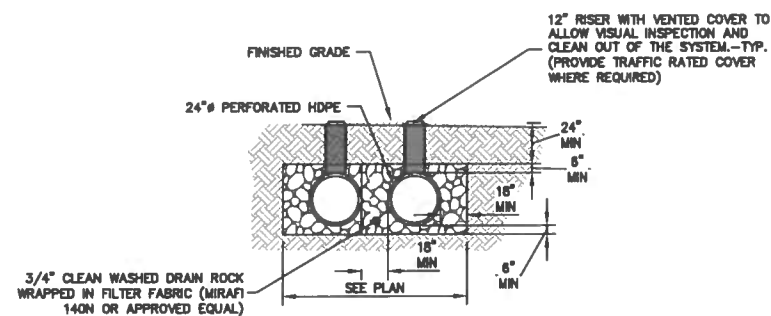
TYPICAL SECTION

NOTES:

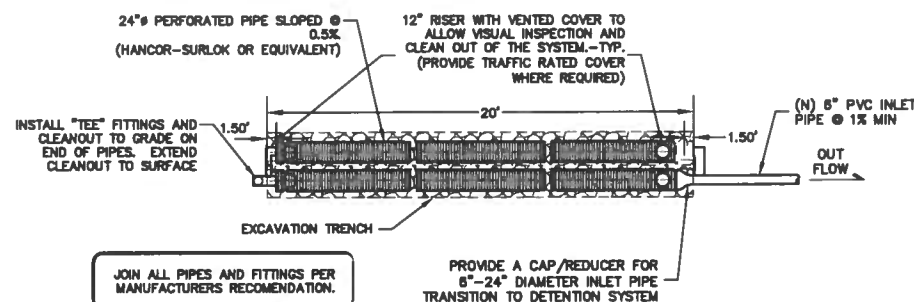
- FRAMES AND GRATES MAY BE SPECIFIED FOR PEDESTRIAN OR HIGH TRAFFIC LOADINGS. ALL GRATES ARE BICYCLE PROOF. OPTIONAL GRATE LOCKING DEVICE AVAILABLE ON REQUEST. SEE DRAWING 1000 ON PAGE 1-7. CLOSED-MESH GRATES OR CAST IRON FRAME AND GRATES ARE AVAILABLE ON REQUEST.
- FOR SURFACE AND DISCHARGE OPTIONS AVAILABLE SEE DRAWING NO. 10-507 PAGE 1-8 AND 10-507 PAGE 1-9.
- FRAMES AND GRATES DETAILS SEE PAGES 1-4, 1-5, AND 1-10.
- WALL THICKENINGS ON ALL D.I.S. CAN BE CHANGED UPON REQUEST.
- 18" WIDE D.I.S. REPLACE THE OLD 16" WIDE BOX BK & TL.

DROP INLET TABLE									
MODEL No.	SIZE	A		B		C			
		IN	MM	IN	MM	IN	MM		
CP1212	EK	12	300	12	300	4	100		
CP1818	CK	18	450	18	450	5	125		
CP1824	1K*	18	450	24	600	5	125		
CP2424	2K	24	600	24	600	5	125		
CP2430	3K	24	600	30	750	5	125		
CP3030	BK	30	750	30	750	6	150		
CP2436	1L	24	600	36	900	6	150		
CP3636	1M	36	900	36	900	6	150		
CP2448	3L	24	600	48	1200	6	150		
CP3648	3M	36	900	48	1200	6	150		
CP4848	1R	48	1200	48	1200	6	150		

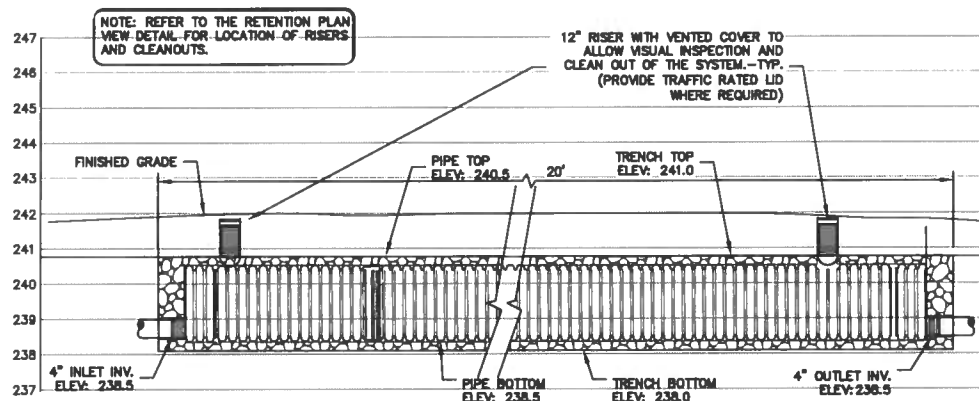
11 CATCH BASIN DETAIL  
C3.2 NTS



SECTION A-A

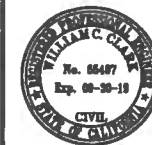


PLAN VIEW



PROFILE

12 RETENTION SYSTEM  
C3.2 NTS



CLARK CIVIL ENGINEERING  
DESIGN • CONSULTING • SURVEY  
12700 Highway One, Port Reyes Station, CA  
PH: 415-292-4450 FAX: 310-372-0239



NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

APN: 029-06-038

SANTA CLARA COUNTY

DETAILS

REVISIONS	BY
JOB NO: 218043	
DATE: 5-12-19	
SCALE: AS NOTED	
DESIGN BY: WCC	
DRAWN BY: DR	
SHEET NO:	

C3.2



CLARK CIVIL ENGINEERING  
DESIGN • CONSULTING • SURVEY  
12700 Highway One, Port Huen Station, CA  
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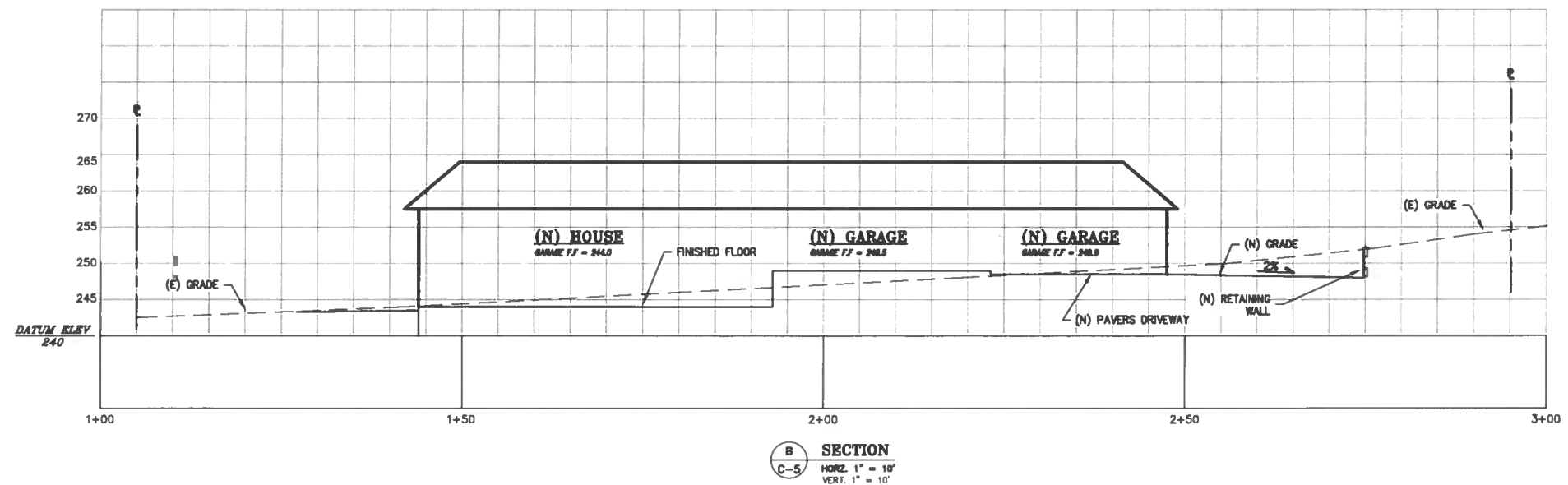
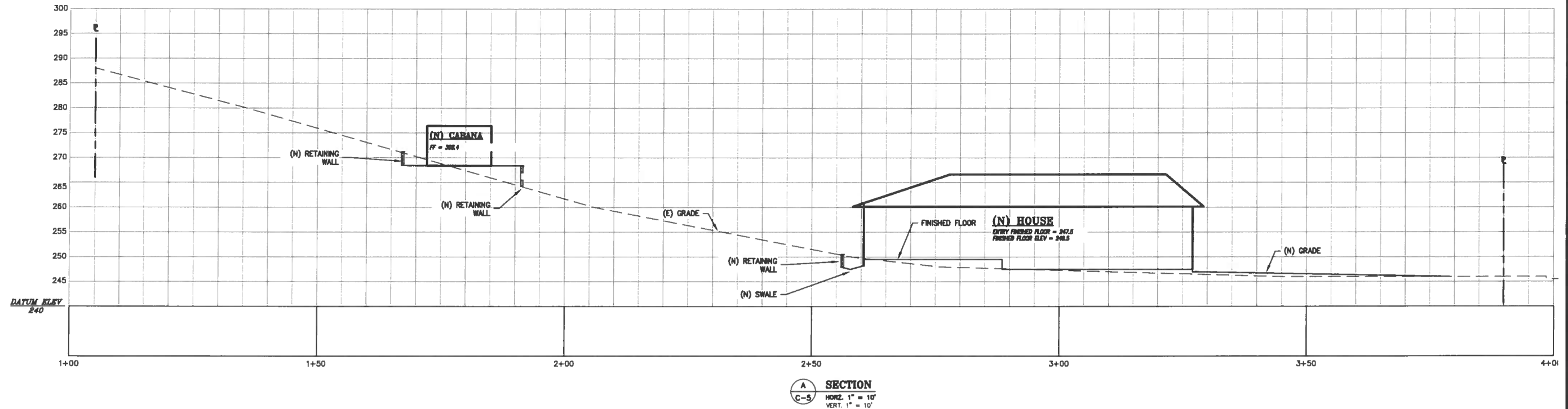


NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

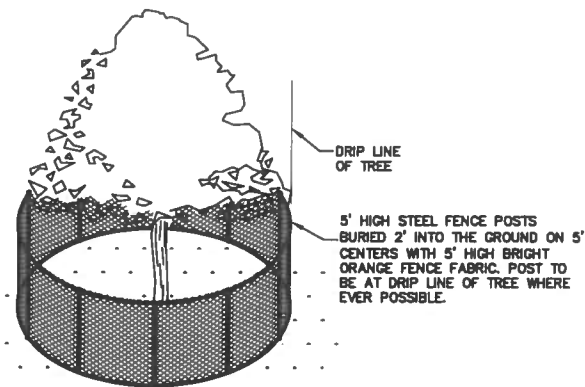
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SANTA CLARA COUNTY

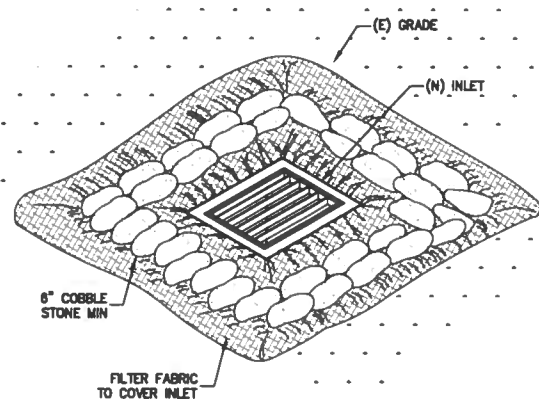
SECTIONS



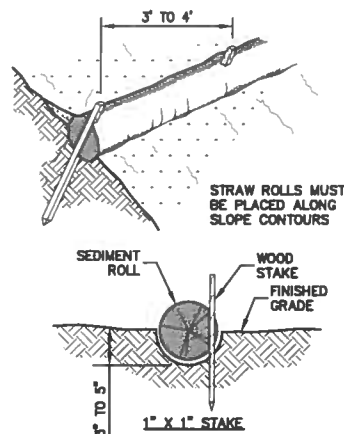
REVISIONS	BY
JOB NO: 218043	
DATE: 2-1-19	
SCALE: AS NOTED	
DESIGN BY: WCC	
DRAWN BY: DR	
SHEET NO:	



1 EXISTING TREE PROTECTION DETAIL  
C4.2 NTS

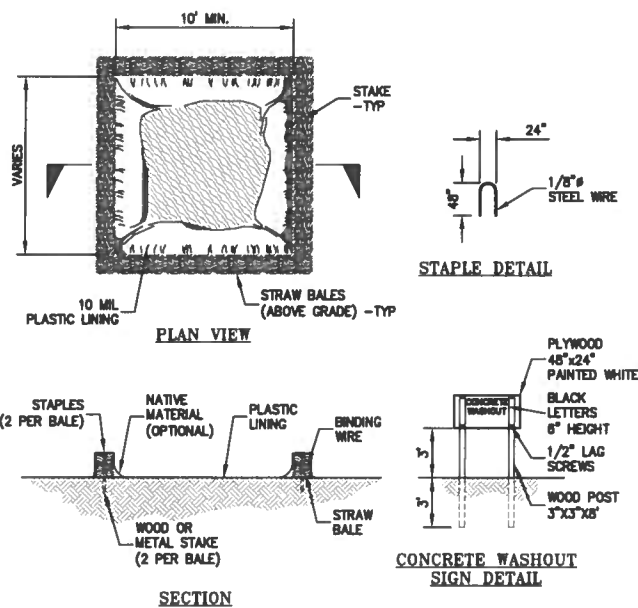


3 INLET PROTECTION  
C4.2 NTS



- NOTE:
1. STRAW ROLL INSTALLATION REQUIRES THE PLACEMENT AND SECURE STAKING OF THE ROLL IN A TRENCH, 3" TO 5" DEEP, DUG ON CONTOUR. RUNOFF MUST NOT BE ALLOWED TO RUN UNDER OR AROUND ROLL. CONTRACTOR IS RESPONSIBLE FOR REGULAR MAINTENANCE AND INSPECTION. THE SILT SHALL BE CLEANED OUT WHEN IT REACHES HALF THE HEIGHT OF THE ROLL.
  - 2.

2 STRAW ROLLS  
C4.2 NTS



4 CONCRETE WASHOUT  
C4.2 NTS

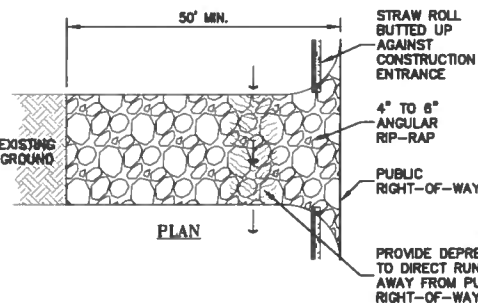
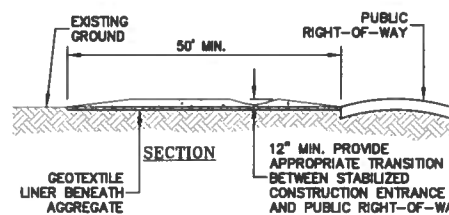
NOTES:  
ACTUAL LAYOUT DETERMINED IN FIELD.  
THE CONCRETE WASHOUT SIGN SHALL BE INSTALLED WITHIN 10' OF THE TEMPORARY CONCRETE WASHOUT FACILITY.

## PURPOSE:

THE PURPOSE OF THIS PLAN IS TO STABILIZE THE SITE TO PREVENT EROSION OF GRADED AREAS AND TO PREVENT SEDIMENTATION FROM LEAVING THE CONSTRUCTION AREA AND AFFECTING NEIGHBORING SITES, NATURAL AREAS, PUBLIC FACILITIES OR ANY OTHER AREA THAT MIGHT BE AFFECTED BY SEDIMENTATION. ALL MEASURES SHOWN ON THIS PLAN SHOULD BE CONSIDERED THE MINIMUM REQUIREMENTS NECESSARY. SHOULD FIELD CONDITIONS DICTATE ADDITIONAL MEASURES, SUCH MEASURES SHALL BE PER CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD'S FIELD MANUAL FOR EROSION AND SEDIMENTATION CONTROL AND THE CALIFORNIA STORM WATER QUALITY ASSOCIATION BEST MANAGEMENT PRACTICES HANDBOOK FOR CONSTRUCTION. CLARK CIVIL ENGINEERING SHOULD BE NOTIFIED IMMEDIATELY SHOULD CONDITIONS CHANGE.

## EROSION CONTROL NOTES:

1. IT SHALL BE THE OWNER'S/CONTRACTOR'S RESPONSIBILITY TO MAINTAIN CONTROL OF THE ENTIRE CONSTRUCTION OPERATION AND TO KEEP THE ENTIRE SITE IN COMPLIANCE WITH THIS EROSION CONTROL PLAN.
2. THE INTENTION OF THIS PLAN IS FOR INTERIM EROSION AND SEDIMENT CONTROL ONLY. ALL EROSION CONTROL MEASURES SHALL CONFORM TO CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD'S FIELD MANUAL FOR EROSION AND SEDIMENTATION CONTROL, THE CALIFORNIA STORM WATER QUALITY ASSOCIATION BEST MANAGEMENT PRACTICES HANDBOOK FOR CONSTRUCTION, AND THE LOCAL GOVERNING AGENCY FOR THIS PROJECT.
3. OWNER/CONTRACTOR SHALL BE RESPONSIBLE FOR MONITORING EROSION AND SEDIMENT CONTROL MEASURES PRIOR TO, DURING, AND AFTER STORM EVENTS. PERSON IN CHARGE OF MAINTAINING EROSION CONTROL MEASURES SHOULD WATCH LOCAL WEATHER REPORTS AND ACT APPROPRIATELY TO MAKE SURE ALL NECESSARY MEASURES ARE IN PLACE.
4. SANITARY FACILITIES SHALL BE MAINTAINED ON THE SITE AT ALL TIMES.
5. DURING THE RAINY SEASON, ALL PAVED AREAS SHALL BE KEPT CLEAR OF EARTH MATERIAL AND DEBRIS. THE SITE SHALL BE MAINTAINED SO AS TO MINIMIZE SEDIMENT-LOADED RUNOFF TO ANY STORM DRAINAGE SYSTEM, INCLUDING EXISTING DRAINAGE SWALES AND WATERCOURSES.
6. CONSTRUCTION OPERATIONS SHALL BE CARRIED OUT IN SUCH A MANNER THAT EROSION AND WATER POLLUTION WILL BE MINIMIZED. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS CONCERNING POLLUTION SHALL BE MAINTAINED AT ALL TIMES.
7. CONTRACTOR SHALL PROVIDE DUST CONTROL AS REQUIRED BY THE APPROPRIATE FEDERAL, STATE AND LOCAL AGENCY REQUIREMENTS.
8. ALL MATERIALS NECESSARY FOR THE APPROVED EROSION CONTROL MEASURES SHALL BE IN PLACE BY OCTOBER 15TH.
9. EROSION CONTROL SYSTEMS SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE RAINY SEASON, OR FROM OCTOBER 15TH THROUGH APRIL 15TH, WHICHEVER IS LONGER.
10. IN THE EVENT OF RAIN, ALL GRADING WORK IS TO CEASE IMMEDIATELY AND THE SITE IS TO BE SEALED IN ACCORDANCE WITH THE APPROVAL EROSION CONTROL MEASURES AND APPROVED EROSION CONTROL PLAN.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CHECKING AND REPAIRING EROSION CONTROL SYSTEMS AFTER EACH STORM.
12. ADDITIONAL EROSION CONTROL MEASURES MAY BE REQUIRED BY COUNTY'S ENGINEERING DEPARTMENT OR BUILDING OFFICIALS.
13. MEASURES SHALL BE TAKEN TO COLLECT OR CLEAN ANY ACCUMULATION OR DEPOSIT OF DIRT, MUD, SAND, ROCKS, GRAVEL OR DEBRIS ON THE SURFACE OF ANY STREET, ALLEY OR PUBLIC PLACE OR IN ANY PUBLIC STORM DRAIN SYSTEMS. THE REMOVAL OF AFORESAID SHALL BE DONE BY STREET SWEEPING OR HAND SWEEPING. WATER SHALL NOT BE USED TO WASH SEDIMENTS INTO PUBLIC OR PRIVATE DRAINAGE FACILITIES.
14. EROSION CONTROL MEASURES SHALL BE ON-SITE FROM SEPTEMBER 15TH THRU APRIL 15TH.
15. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE RAINY SEASON OR FROM OCTOBER 15 THRU APRIL 15, WHICHEVER IS GREATER.



5 CONSTRUCTION ENTRANCE  
C4.2 NTS

## NOTES:

STABILIZED CONSTRUCTION SITE ACCESS SHALL BE CONSTRUCTED OF 3" TO 4" WASHED, FRACTURED STONE AGGREGATE.

MATERIAL SHALL BE PLACED TO A MINIMUM THICKNESS OF 12". LENGTH OF ENTRANCE SHALL BE A MINIMUM OF 50'.

WIDTH SHALL BE A MIN. OF 15' OR GREATER IF NECESSARY TO COVER ALL VEHICULAR INGRESS AND EGRESS. PROVIDE AMPLE TURNING RADIUS.

THE ENTRANCE SHALL BE KEPT IN GOOD CONDITION BY OCCASIONAL TOP DRESSING WITH MATERIAL AS SPECIFIED IN ABOVE NOTE.

ACCESSES SHALL BE INSPECTED WEEKLY DURING PERIODS OF HEAVY USAGE, MONTHLY DURING NORMAL USAGE, AND AFTER EACH RAINFALL, WITH MAINTENANCE PROVIDED AS NECESSARY.

PERIODIC TOP DRESSING SHALL BE DONE AS NEEDED.

## PERIODIC MAINTENANCE:

1. MAINTENANCE IS TO BE PERFORMED AS FOLLOWS:
  - A. DAMAGES CAUSED BY SOIL EROSION OR CONSTRUCTION SHALL BE REPAIRED AT THE END OF EACH WORKING DAY.
  - B. SWALES SHALL BE INSPECTED PERIODICALLY AND MAINTAINED AS NEEDED.
  - C. SEDIMENT TRAPS, BERMS, AND SWALES ARE TO BE INSPECTED AFTER EACH STORM AND REPAIRS MADE AS NEEDED.
  - D. SEDIMENT SHALL BE REMOVED AND SEDIMENT TRAP RESTORED TO ITS ORIGINAL DIMENSIONS WHEN SEDIMENT HAS ACCUMULATED TO A DEPTH OF 1' FOOT.
  - E. SEDIMENT REMOVED FROM TRAP SHALL BE DEPOSITED IN A SUITABLE AREA AND IN SUCH A MANNER THAT IT WILL NOT ERODE.
  - F. RILLS AND GULLIES MUST BE REPAIRED.
2. GRAVEL BAG INLET PROTECTION SHALL BE CLEANED OUT WHENEVER SEDIMENT DEPTH IS ONE HALF THE HEIGHT OF ONE GRAVEL BAG.
3. STRAW ROLLS SHALL BE PERIODICALLY CHECKED TO ASSURE PROPER FUNCTION AND CLEANED OUT WHENEVER THE SEDIMENT DEPTH REACHED HALF THE HEIGHT OF THE ROLL.
4. SILT FENCE SHALL BE PERIODICALLY CHECKED TO ASSURE PROPER FUNCTION AND CLEANED OUT WHENEVER THE SEDIMENT DEPTH REACHES ONE FOOT IN HEIGHT.
5. CONSTRUCTION ENTRANCE SHALL BE REGRAVELED AS NECESSARY FOLLOWING SILT/SOIL BUILDUP.
6. ANY OTHER EROSION CONTROL MEASURES SHOULD BE CHECKED AT REGULAR INTERVALS TO ASSURE PROPER FUNCTION.

## EROSION CONTROL MEASURES:

1. THE FACILITIES SHOWN ON THIS PLAN ARE DESIGNED TO CONTROL EROSION AND SEDIMENT DURING THE RAINY SEASON, OCTOBER 15TH TO APRIL 15. EROSION CONTROL FACILITIES SHALL BE IN PLACE PRIOR TO OCTOBER 15TH OF ANY YEAR. GRADING OPERATIONS DURING THE RAINY SEASON WHICH LEAVE DENUDDED SLOPES SHALL BE PROTECTED WITH EROSION CONTROL MEASURES IMMEDIATELY FOLLOWING GRADING ON THE SLOPES.
2. SITE CONDITIONS AT TIME OF PLACEMENT OF EROSION CONTROL MEASURES WILL VARY. APPROPRIATE ACTION INCLUDING TEMPORARY SWALES, INLETS, HYDROSEEDING, STRAW BALES, ROCK SACKS, ETC. SHALL BE TAKEN TO PREVENT EROSION AND SEDIMENTATION FROM LEAVING SITE. EROSION CONTROL MEASURES SHALL BE ADJUSTED AS THE CONDITIONS CHANGE AND THE NEED OF CONSTRUCTION SHIFT.
3. CONSTRUCTION ENTRANCES SHALL BE INSTALLED PRIOR TO COMMENCEMENT OF GRADING. ALL CONSTRUCTION TRAFFIC ENTERING ONTO THE PAVED ROADS MUST CROSS THE STABILIZED CONSTRUCTION ENTRANCES. CONTRACTOR SHALL MAINTAIN STABILIZED ENTRANCE AT EACH VEHICLE ACCESS POINT TO EXISTING PAVED STREETS. ANY MUD OR DEBRIS TRACKED ONTO PUBLIC STREETS SHALL BE REMOVED DAILY AND AS REQUIRED BY THE GOVERNING AGENCY.
4. ALL EXPOSED SLOPES THAT ARE NOT VEGETATED SHALL BE HYDROSEEDING. IF HYDROSEEDING IS NOT USED OR IS NOT EFFECTIVE BY OCTOBER 15, THEN OTHER IMMEDIATE METHODS SHALL BE IMPLEMENTED, SUCH AS EROSION CONTROL BLANKETS, OR A THREE-STEP APPLICATION OF: 1) SEED, MULCH, FERTILIZER 2) BLOWN STRAW 3) TACKIFIER AND MULCH. HYDROSEEDING SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 20" EROSION CONTROL AND HIGHWAY PLANTING OF THE STANDARD SPECIFICATION OF THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AS LAST REVISED. REFER TO THE EROSION CONTROL SECTION OF THE GRADING SPECIFICATIONS THAT ARE A PART OF THIS PLAN SET FOR FURTHER INFORMATION.
5. INLET PROTECTION SHALL BE INSTALLED AT OPEN INLETS TO PREVENT SEDIMENT FROM ENTERING THE STORM DRAIN SYSTEM. INLETS NOT USED IN CONJUNCTION WITH EROSION CONTROL ARE TO BE BLOCKED TO PREVENT ENTRY OF SEDIMENT. MINIMUM INLET PROTECTION SHALL CONSIST OF A ROCK SACKS OR AS SHOWN ON THIS PLAN.
6. THIS EROSION AND SEDIMENT CONTROL PLAN MAY NOT COVER ALL THE SITUATIONS THAT MAY ARISE DURING CONSTRUCTION DUE TO UNANTICIPATED FIELD CONDITIONS. VARIATIONS AND ADDITIONS MAY BE MADE TO THIS PLAN IN THE FIELD. A REPRESENTATIVE OF CLARK CIVIL ENGINEERING SHALL PERFORM A FIELD REVIEW AND MAKE RECOMMENDATIONS AS NEEDED. CONTRACTOR IS RESPONSIBLE TO NOTIFY CLARK CIVIL ENGINEERING AND THE GOVERNING AGENCY OF ANY CHANGES.
7. THE EROSION CONTROL MEASURES SHALL CONFORM TO THE COUNTY STANDARDS AND THE APPROVAL OF THE COUNTY'S ENGINEERING DEPARTMENT.
8. STRAW ROLLS SHALL BE PLACED AT THE TOE OF SLOPES AND ALONG THE DOWNSLOPE PERIMETER OF THE PROJECT. THEY SHALL BE PLACED AT 25 FOOT INTERVALS ON GRADED SLOPES. PLACEMENT SHALL RUN WITH THE CONTOURS AND ROLLS SHALL BE TIGHTLY ENDBUTTED. CONTRACTOR SHALL REFER TO MANUFACTURES SPECIFICATIONS FOR PLACEMENT AND INSTALLATION INSTRUCTIONS.

## REFERENCES:

1. CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD'S FIELD MANUAL FOR EROSION AND SEDIMENTATION CONTROL
2. CALIFORNIA STORM WATER QUALITY ASSOCIATION BEST MANAGEMENT PRACTICES HANDBOOK FOR CONSTRUCTION



CLARK CIVIL ENGINEERING  
DESIGN • CONSULTING • SURVEY  
17700 Highway One, Pleasanton, CA  
Tel: 415-795-4450 Fax: 510-372-0259



NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

APN: 029-06-038

SANTA CLARA COUNTY

EROSION &  
SEDIMENTATION  
CONTROL NOTES &  
DETAILS

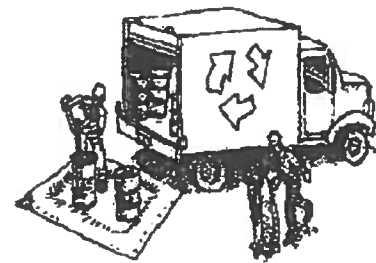
REVISIONS	BY
1	
2	
3	
4	
5	
JOB NO:	218043
DATE:	5-12-19
SCALE:	AS NOTED
DESIGN BY:	WCC
DRAWN BY:	DR
SHEET NO:	

C4.2

# Construction Best Management Practices (BMPs)

Construction projects are required to implement the stormwater best management practices (BMP) on this page, as they apply to your project, all year long.

## Materials & Waste Management



### Non-Hazardous Materials

- ❑ Berm and cover stockpiles of sand, dirt or other construction material with tarps when rain is forecast or if not actively being used within 14 days.
- ❑ Use (but don't overuse) reclaimed water for dust control.

### Hazardous Materials

- ❑ Label all hazardous materials and hazardous wastes (such as pesticides, paints, thinners, solvents, fuel, oil, and antifreeze) in accordance with city, county, state and federal regulations.
- ❑ Store hazardous materials and wastes in water tight containers, store in appropriate secondary containment, and cover them at the end of every work day or during wet weather or when rain is forecast.
- ❑ Follow manufacturer's application instructions for hazardous materials and be careful not to use more than necessary. Do not apply chemicals outdoors when rain is forecast within 24 hours.
- ❑ Arrange for appropriate disposal of all hazardous wastes.

### Waste Management

- ❑ Cover waste disposal containers securely with tarps at the end of every work day and during wet weather.
- ❑ Check waste disposal containers frequently for leaks and to make sure they are not overfilled. Never hose down a dumpster on the construction site.
- ❑ Clean or replace portable toilets, and inspect them frequently for leaks and spills.
- ❑ Dispose of all wastes and debris properly. Recycle materials and wastes that can be recycled (such as asphalt, concrete, aggregate base materials, wood, gyp board, pipe, etc.).
- ❑ Dispose of liquid residues from paints, thinners, solvents, glues, and cleaning fluids as hazardous waste.

### Construction Entrances and Perimeter

- ❑ Establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from site and tracking off site.
- ❑ Sweep or vacuum any street tracking immediately and secure sediment source to prevent further tracking. Never hose down streets to clean up tracking.

## Equipment Management & Spill Control



### Maintenance and Parking

- ❑ Designate an area, fitted with appropriate BMPs, for vehicle and equipment parking and storage.
- ❑ Perform major maintenance, repair jobs, and vehicle and equipment washing off site.
- ❑ If refueling or vehicle maintenance must be done onsite, work in a bermed area away from storm drains and over a drip pan big enough to collect fluids. Recycle or dispose of fluids as hazardous waste.
- ❑ If vehicle or equipment cleaning must be done onsite, clean with water only in a bermed area that will not allow rinse water to run into gutters, streets, storm drains, or surface waters.
- ❑ Do not clean vehicle or equipment onsite using soaps, solvents, degreasers, steam cleaning equipment, etc.

### Spill Prevention and Control

- ❑ Keep spill cleanup materials (rags, absorbents, etc.) available at the construction site at all times.
- ❑ Inspect vehicles and equipment frequently for and repair leaks promptly. Use drip pans to catch leaks until repairs are made.
- ❑ Clean up spills or leaks immediately and dispose of cleanup materials properly.
- ❑ Do not hose down surfaces where fluids have spilled. Use dry cleanup methods (absorbent materials, cat litter, and/or rags).
- ❑ Sweep up spilled dry materials immediately. Do not try to wash them away with water, or bury them.
- ❑ Clean up spills on dirt areas by digging up and properly disposing of contaminated soil.
- ❑ Report significant spills immediately. You are required by law to report all significant releases of hazardous materials, including oil. To report a spill: 1) Dial 911 or your local emergency response number. 2) Call the Governor's Office of Emergency Services Warning Center, (800) 852-7550 (24 hours).

## Earthwork & Contaminated Soils



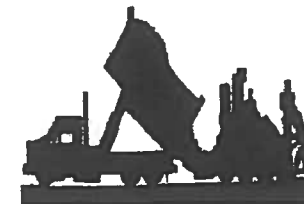
### Erosion Control

- ❑ Schedule grading and excavation work for dry weather only.
- ❑ Stabilize all denuded areas, install and maintain temporary erosion controls (such as erosion control fabric or bonded fiber matrix) until vegetation is established.
- ❑ Seed or plant vegetation for erosion control on slopes or where construction is not immediately planned.

### Sediment Control

- ❑ Protect storm drain inlets, gutters, ditches, and drainage courses with appropriate BMPs, such as gravel bags, fiber rolls, berms, etc.
- ❑ Prevent sediment from migrating offsite by installing and maintaining sediment controls, such as fiber rolls, silt fences, or sediment basins.
- ❑ Keep excavated soil on the site where it will not collect into the street.
- ❑ Transfer excavated materials to dump trucks on the site, not in the street.
- ❑ Contaminated Soils
  - Unusual soil conditions, discoloration, or odor
  - Abandoned underground tanks.
  - Abandoned wells
  - Buried barrels, debris, or trash.

## Paving/Asphalt Work



- ❑ Avoid paving and seal coating in wet weather, or when rain is forecast before fresh pavement will have time to cure.
- ❑ Cover storm drain inlets and manholes when applying seal coat, tack coat, slurry seal, fog seal, etc.
- ❑ Collect and recycle or appropriately dispose of excess abrasive gravel or sand. Do NOT sweep or wash it into gutters.
- ❑ Do not use water to wash down fresh asphalt concrete pavement.

### Sawcutting & Asphalt/Concrete Removal

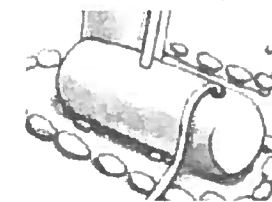
- ❑ Completely cover or barricade storm drain inlets when saw cutting. Use filter fabric, catch basin inlet filters, or gravel bags to keep slurry out of the storm drain system.
- ❑ Shovel, absorb, or vacuum saw-cut slurry and dispose of all waste as soon as you are finished in one location or at the end of each work day (whichever is sooner!).
- ❑ If saw cut slurry enters a catch basin, clean it up immediately.

## Concrete, Grout & Mortar Application



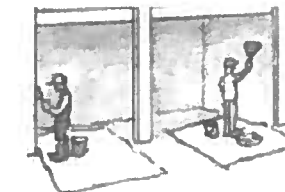
- ❑ Store concrete, grout and mortar under cover, on pallets and away from drainage areas. These materials must never reach a storm drain.
- ❑ Wash out concrete equipment/trucks offsite or in a contained area, so there is no discharge into the underlying soil or onto surrounding areas. Let concrete harden and dispose of as garbage.
- ❑ Collect the wash water from washing exposed aggregate concrete and remove it for appropriate disposal offsite.

### Dewatering



- ❑ Effectively manage all run-on, all runoff within the site, and all runoff that discharges from the site. Divert run-on water from offsite away from all disturbed areas or otherwise ensure compliance.
- ❑ When dewatering, notify and obtain approval from the local municipality before discharging water to a street gutter or storm drain. Filtration or diversion through a basin, tank, or sediment trap may be required.
- ❑ In areas of known contamination, testing is required prior to reuse or discharge of groundwater. Consult with the Engineer to determine whether testing is required and how to interpret results. Contaminated groundwater must be treated or hauled off-site for proper disposal.

## Painting & Paint Removal



### Painting cleanup

- ❑ Never clean brushes or rinse paint containers into a street, gutter, storm drain, or surface waters.
- ❑ For water-based paints, paint out brushes to the extent possible. Rinse to the sanitary sewer once you have gained permission from the local wastewater treatment authority. Never pour paint down a drain.
- ❑ For oil-based paints, paint out brushes to the extent possible and clean with thinner or solvent in a proper container. Filter and reuse thinners and solvents. Dispose of residue and unusable thinner/solvents as hazardous waste.

### Paint removal

- ❑ Chemical paint stripping residue and chips and dust from marine paints or paints containing lead or tributyltin must be disposed of as hazardous waste.
- ❑ Paint chips and dust from non-hazardous dry stripping and sand blasting may be swept up or collected in plastic drop cloths and disposed of as trash.

## Landscape Materials



- ❑ Contain stockpiled landscaping materials by storing them under tarps when they are not actively being used.
- ❑ Stack erodible landscape material on pallets. Cover or store these materials when they are not actively being used or applied.
- ❑ Discontinue application of any erodible landscape material within 2 days before a forecast rain event or during wet weather.

Storm drain polluters may be liable for fines of up to \$10,000 per day!



CLARK CIVIL ENGINEERING  
DESIGN • CONSULTING • SURVEY  
12700 Highway One, Round Rock Station, TX  
PH: 515-289-4450 FAX: 515-372-0258



NEW RESIDENCE  
898 CALAVERAS RIDGE DR.  
MILPITAS, CALIFORNIA

APN: 029-06-038

SANTA CLARA COUNTY

CONSTRUCTION  
BEST  
MANAGEMENT  
PRACTICES (SWPP)

-	-
-	-
-	-
-	-
-	-

REVISIONS	BY
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JOB NO:	218043
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DATE:	2-1-19
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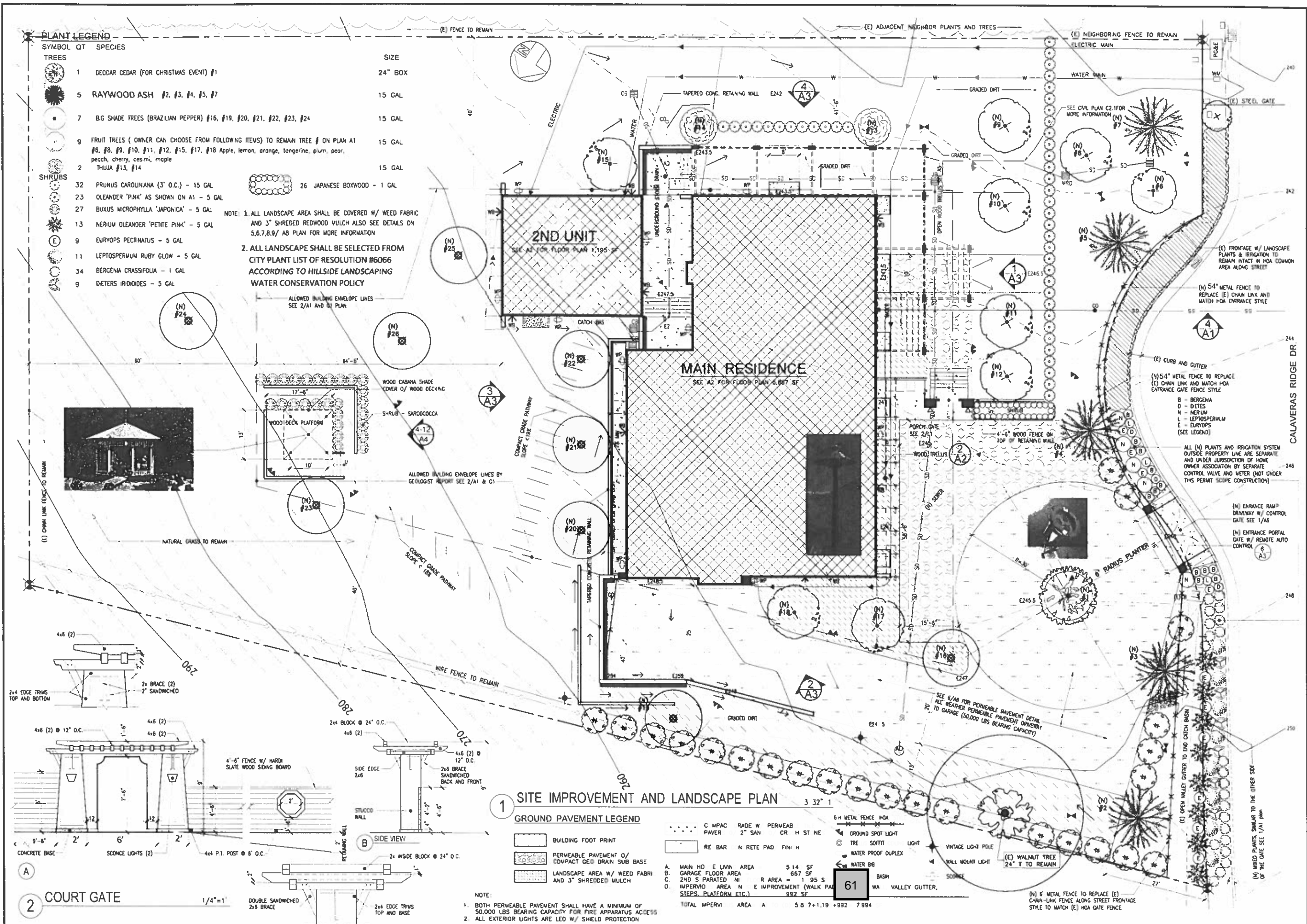
SCALE:	AS NOTED
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DESIGN BY:	WCC
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DRAWN BY:	DR
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SHEET NO:	
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C4.3



PLANT LEGEND		
SYMBOL	QT	SPECIES
TREES		
1	1	DEODAR CEDAR (FOR CHRISTMAS EVENT) #1
5	2, 3, 4, 5, 7	RAYWOOD ASH
7	15 GAL	BIG SHADE TREES (BRAZILIAN PEPPER) #16, #19, #20, #21, #22, #23, #24
9	15 GAL	FRUIT TREES (OWNER CAN CHOOSE FROM FOLLOWING ITEMS) TO REMAIN TREE # ON PLAN A1 #6, #8, #9, #10, #11, #12, #15, #17, #18 Apple, lemon, orange, tangerine, plum, pear, peach, cherry, casim, maple
2	15 GAL	THUJA #13, #14
SHRUBS		
32	15 GAL	PRUNUS CAROLINIANA (3' O.C.) - 15 GAL
23	5 GAL	OLEANDER 'PINK' AS SHOWN ON A1 - 5 GAL
27	5 GAL	BUXUS MICROPHYLLA 'JAPONICA' - 5 GAL
13	5 GAL	NERIUM OLEANDER 'PETITE PINK' - 5 GAL
9	5 GAL	EURYOPS PECTINATUS - 5 GAL
11	5 GAL	LEPTOSPERMUM RUBY GLOW - 5 GAL
34	1 GAL	BERGENIA CRASSIFOLIA - 1 GAL
9	5 GAL	DIETERS IRIDIODES - 5 GAL

NOTE: 1. ALL LANDSCAPE AREA SHALL BE COVERED W/ WEED FABRIC AND 3" SHREDED REDWOOD MULCH ALSO SEE DETAILS ON 5,6,7,8,9/ A8 PLAN FOR MORE INFORMATION  
2. ALL LANDSCAPE SHALL BE SELECTED FROM CITY PLANT LIST OF RESOLUTION #6066 ACCORDING TO HILLSIDE LANDSCAPING WATER CONSERVATION POLICY

1 SITE IMPROVEMENT AND LANDSCAPE PLAN

GROUND PAVEMENT LEGEND

- BUILDING FOOT PRINT
- PERMEABLE PAVEMENT O/ COMPACT GEO DRAIN SUB BASE
- LANDSCAPE AREA W/ WEED FABRI AND 3" SHREDED MULCH

.....	C MPAC PAV	RADE W PERMEAB	2" SAN	CR	H	ST	NE
RE BAR	N	RETE PAD	FINI	H			
A. MAIN HO E LVIN AREA 514 SF							
B. GARAGE FLOOR AREA 667 SF							
C. 2ND S PARATED NI R AREA = 1 95 S							
D. IMPERVIO AREA N E IMPROVEMENT (WALK PA STEPS, PLATFORM ETC.) 992 SF							
TOTAL IMPERVI AREA A 5 8 7+1.19 +992 7 994							

NOTE:  
1. BOTH PERMEABLE PAVEMENT SHALL HAVE A MINIMUM OF 50,000 LBS BEARING CAPACITY FOR FIRE APPARATUS ACCESS  
2. ALL EXTERIOR UGHTS ARE LED W/ SHIELD PROTECTION

REVISIONS

ALTA LANDSCAPES INC.  
Design & Installation CA Lic No. 800968  
STEVE WONG - Landscape Architect No. 2087  
30225 ARAGON PL, UNION CITY, CA 94587  
(415) 435-1000 Fax: (415) 477-0587  
Cell: (415) 277-3828

Professional Seal

PENG RESIDENCE  
898 CALAVERAS RIDGE DR  
MILPITAS, CA 95035

Sheet Title

Date 02.05.19

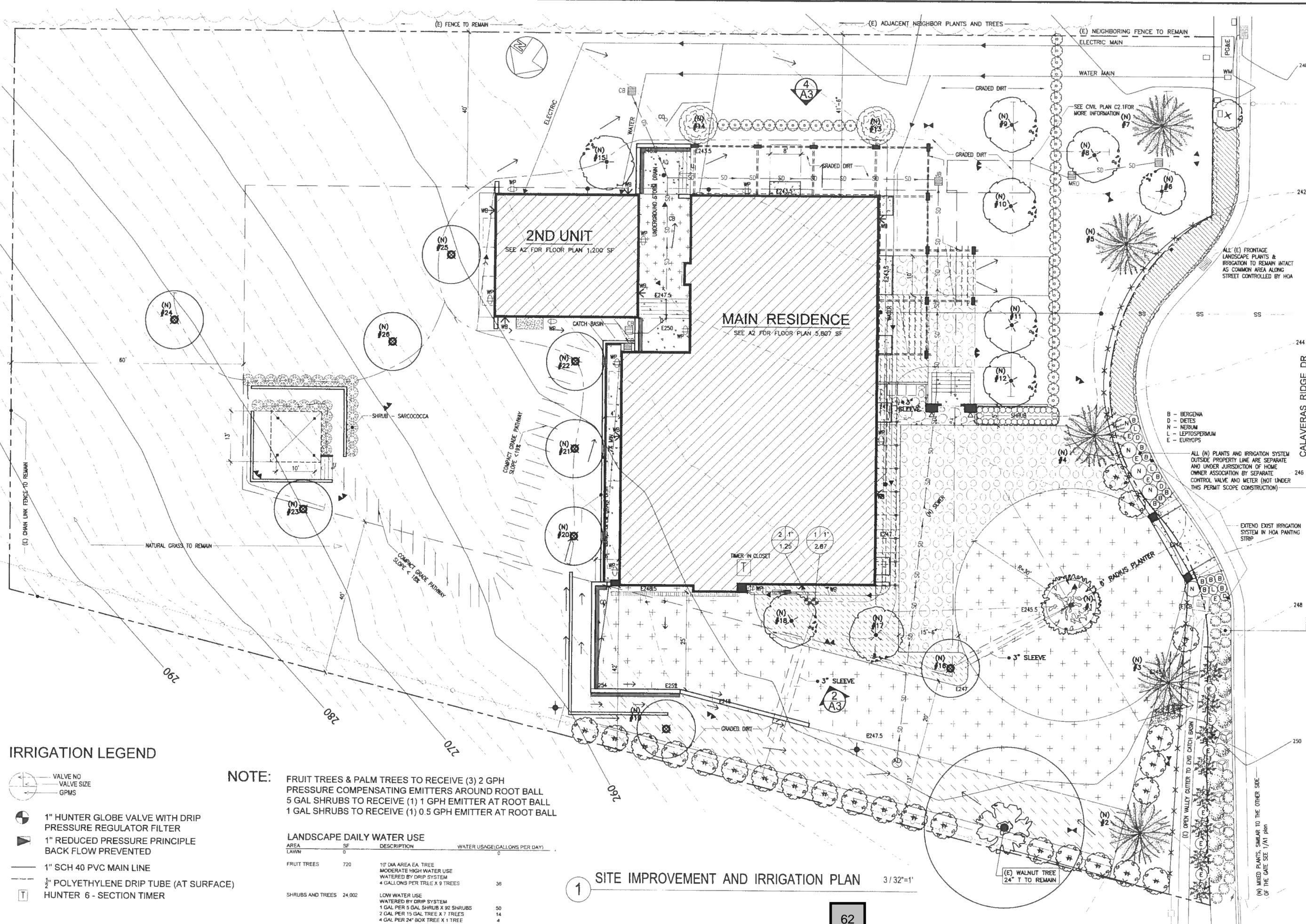
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Job

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Sheet L1



IRRIGATION LEGEND

- VALVE NO
- VALVE SIZE
- GPMS
- 1" HUNTER GLOBE VALVE WITH DRIP PRESSURE REGULATOR FILTER
- 1" REDUCED PRESSURE PRINCIPLE BACK FLOW PREVENTED
- 1" SCH 40 PVC MAIN LINE
- 3/4" POLYETHYLENE DRIP TUBE (AT SURFACE)
- HUNTER 6 - SECTION TIMER

NOTE: FRUIT TREES & PALM TREES TO RECEIVE (3) 2 GPH PRESSURE COMPENSATING EMITTERS AROUND ROOT BALL  
5 GAL SHRUBS TO RECEIVE (1) 1 GPH EMITTER AT ROOT BALL  
1 GAL SHRUBS TO RECEIVE (1) 0.5 GPH EMITTER AT ROOT BALL

LANDSCAPE DAILY WATER USE		WATER USAGE (GALLONS PER DAY)	
AREA	SF	DESCRIPTION	
LAWN			
FRUIT TREES	720	10" DIA AREA EA. TREE MODERATE HIGH WATER USE WATERED BY DRIP SYSTEM 4 GALLONS PER TREE X 9 TREES	36
SHRUBS AND TREES			
	24,002	LOW WATER USE WATERED BY DRIP SYSTEM 1 GAL PER 5 GAL SHRUB X 92 SHRUBS 2 GAL PER 15 GAL TREE X 7 TREES 4 GAL PER 24" BOX TREE X 1 TREE	50 14 4
TOTAL DAILY WATER USE			104 GALLONS/DAY

1 SITE IMPROVEMENT AND IRRIGATION PLAN 3/32"=1'

REVISIONS

ALTA LANDSCAPES INC.  
Design & Installation CA Lic. No. 800986  
STEVE WONG - Landscape Architect No. 2087  
30825 ARAGON BL UNION CITY CA 94587  
Tel: (510) 471-7888, Fax: (510) 477-0387  
Cell: (510) 377-6836

UNITED ARAB EMIRATES  
STATE OF U.A.E.  
DATE: 07.10.19

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PENG RESIDENCE  
898 CALAVERAS RIDGE DR  
MILPITAS, CA 95035

Sheet Title

Date  
02-05-19

Scale

Drawn

Job

File


Sheet  
L2





TOPOGRAPHICAL  
LAND SURVEY

BEING A SURVEY OF  
LOT 4, TRACT NO. 7328  
CALAVERAS RIDGE ESTATES, 535 MAPS 8-9  
SANTA CLARA COUNTY, CALIFORNIA  
APN: 029-06-038 JULY 2019  
CONSISTING OF ONE SHEET

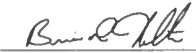
  
**American Baseline Company**  
2464 El Camino Real, 117, Santa Clara, CA 95051  
408/394-9281, manager.ambaco@gmail.com

NOTES:

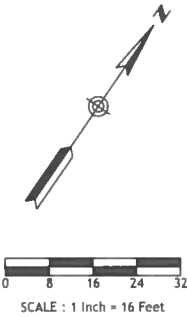
- 1. SITE: LOT 4, TRACT NO. 7328, CALAVERAS RIDGE ESTATES, SANTA CLARA COUNTY, CA 94920
- 2. TOTAL ACREAGE: 55,323 SQ. FT., 1.27 AC.
- 3. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
- 4. THE UTILITIES SHOWN ON THIS MAP ARE DERIVED FROM RECORD DATA AND/OR SURFACE OBSERVATION AND ARE APPROXIMATE ONLY. ACTUAL LOCATION AND SIZE, TOGETHER WITH THE PRESENCE OF ANY ADDITIONAL UTILITY LINES NOT SHOWN ON THIS MAP, SHALL BE VERIFIED IN THE FIELD BY THE CONTRACTOR DURING CONSTRUCTION. THIS MAP REPRESENTS TOPOGRAPHY OF THE SURFACE FEATURES ONLY. 5. ALL TREE DIMENSIONS ARE THE DIAMETER AT 46" ABOVE GRADE. SPECIES OF TREES TO BE DETERMINED/VERIFIED BY AN ARBORIST.
- 6. A CURRENT TITLE REPORT FOR THE SUBJECT PROPERTY HAS NOT BEEN EXAMINED BY AMERICAN BASELINE COMPANY. OTHER EASEMENTS OF RECORD MAY EXIST THAT ARE NOT SHOWN ON THIS MAP.

SURVEYOR'S STATEMENT:

THIS MAP CORRECTLY REPRESENTS A TOPOGRAPHICAL SURVEY MADE BY ME OR BY RESPONSIBLE CHARGES UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSION OF LAND SURVEYING AT THE REQUEST OF KC ASSOCIATES IN APRIL 2018.

  
SIGNATURE

6/2/19  
DATE



REFERENCES:

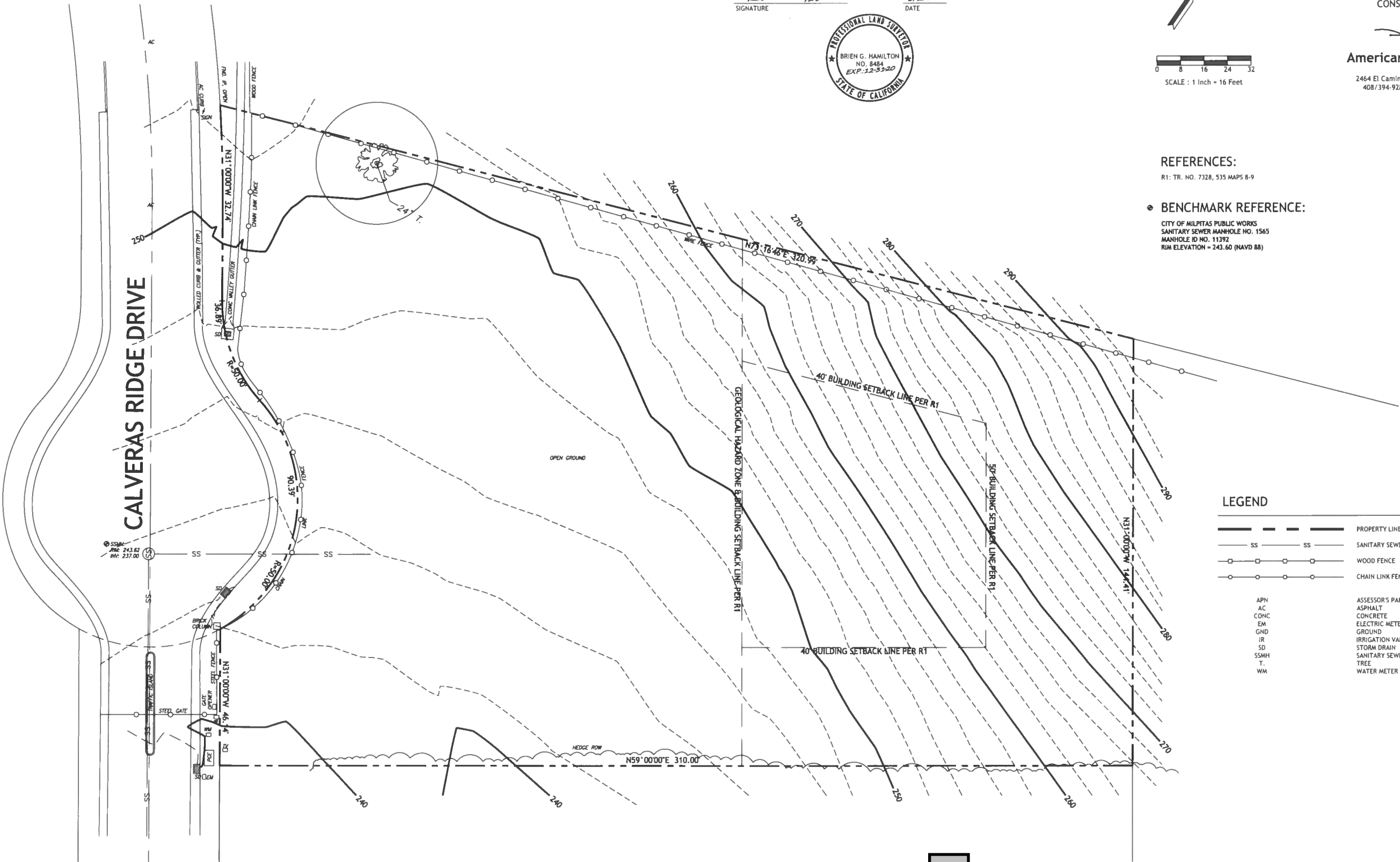
R1: TR. NO. 7328, 535 MAPS 8-9

BENCHMARK REFERENCE:

CITY OF MILPITAS PUBLIC WORKS  
SANITARY SEWER MANHOLE NO. 1565  
MANHOLE ID NO. 11392  
RUM ELEVATION = 243.60 (NAVD 88)

LEGEND

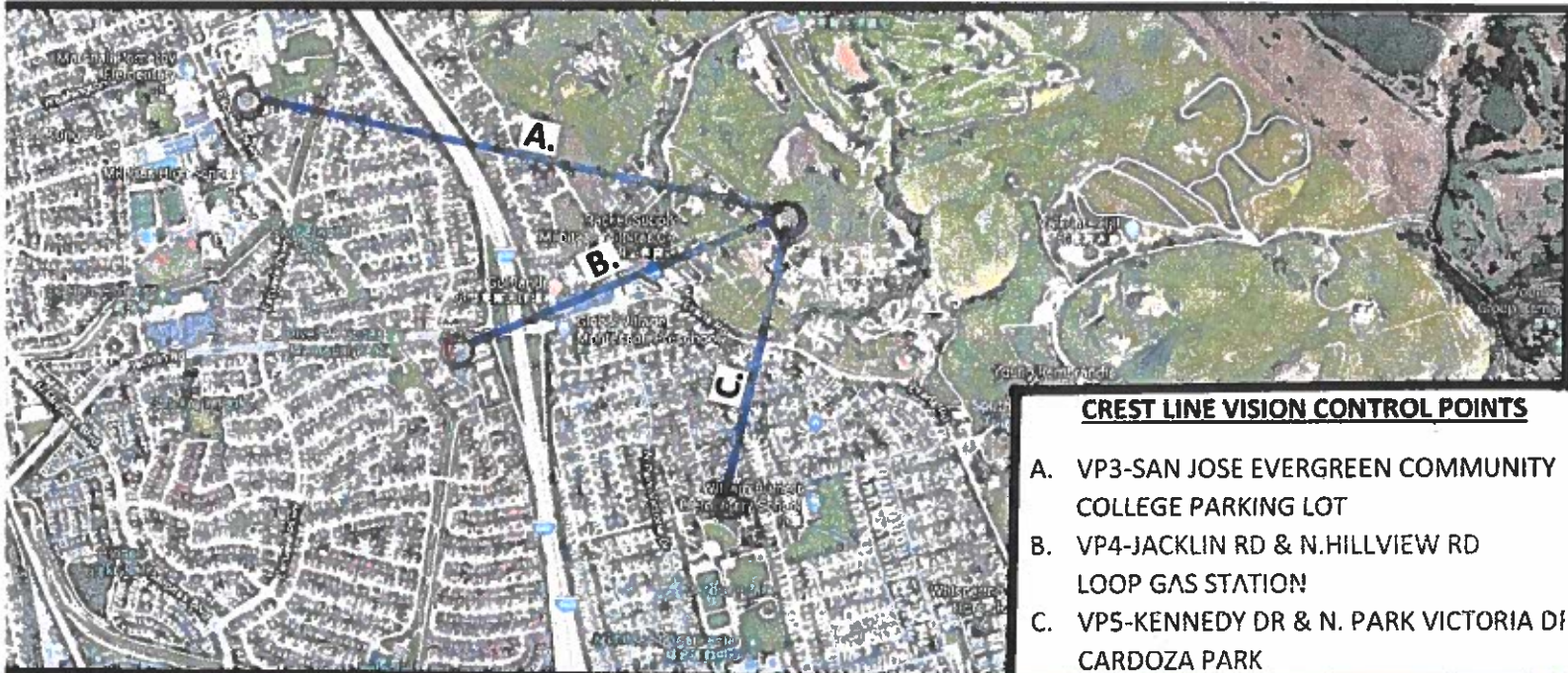
	PROPERTY LINE
	SS
	SANITARY SEWER LINE
	WOOD FENCE
	CHAIN LINK FENCE
APN	ASSESSOR'S PARCEL NUMBER
AC	ASPHALT
CONC	CONCRETE
EM	ELECTRIC METER
GND	GROUND
IR	IRRIGATION VALVE
SD	STORM DRAIN
SSMH	SANITARY SEWER MANHOLE
T	TREE
WM	WATER METER











### CREST LINE VISION CONTROL POINTS

- A. VP3-SAN JOSE EVERGREEN COMMUNITY COLLEGE PARKING LOT
- B. VP4-JACKLIN RD & N.HILLVIEW RD LOOP GAS STATION
- C. VP5-KENNEDY DR & N. PARK VICTORIA DR CARDOZA PARK



**Attachment D**  
**Table 1**  
**Section 10-45.18 for Grading Requirements in Hillside Zones**

Grading and Landscape	Conformance
Grading will “blend” in with the natural land forms and native vegetation to the maximum extent feasible.	<b>Conforms.</b> As proposed, the main dwelling and the second family dwelling unit shall be located where the parcel is relatively flat so that grading can be minimized. All grading shall blend in with the natural contours of the site, and therefore, will conform to this requirement.
No grading cut or embankment with a slope greater than three (3) feet horizontal to one (1) foot vertical shall be located adjacent to a publicly maintained right-of-way.	<b>Conforms.</b> As proposed, the main dwelling will be located forty (40) feet away from the public right-of-way.
The overall shape, height, grade, or any cut-or-fill slopes shall be developed in concert with existing natural contours and scale of the natural terrain of a particular site.	<b>Conforms.</b> As proposed, the main dwelling and the second family dwelling unit shall be located where the parcel is relatively flat so that grading can be minimized. The proposed grading plan shows that 565 cubic yards aggregate grading will be required for the construction of the home and second family dwelling unit. The impact will be minimal since the new contours will be designed to blend with the natural contours as demonstrated in the civil drawings and therefore meets the grading ordinance criteria.
Provide sites which fit into the terrain and allow for minimal amount of grading. Grading of any area of a site with a natural slope greater than forty (40) percent shall be prohibited.	<b>Conforms.</b> As proposed, minimal grading is proposed for the main residence and second family dwelling unit.
Stepped building foundations shall be required to minimize grading on building pads.	<b>Conforms.</b> The applicant has proposed stepped building foundations to minimize grading.

Grading and Landscape	Conformance
Structure shall be designed to fit with the contours of the hillside and relate to overall form of the terrain. Structures shall be designed to fit into the hillside rather than altering the hillside to fit to the structure.	<b>Conforms.</b> As proposed, the main dwelling and the second family dwelling unit is situated on the relatively flat section of the parcel and is designed to blend with the natural contours.
Streets shall be designed to generally follow the contours and land form in order to minimize cut and fill. Exposed walls and facing roadways and retaining walls shall be no greater than six feet in height. Crib walls fencing roadways shall be no greater than 15 feet in height.	<b>Conforms &amp; Condition of Approval.</b> Since there is already a PUD established for Calaveras Ridge, no new streets are proposed with this application. As proposed, all retaining walls shall conform to the maximum height requirement.
Landscaping coverage and stabilization of graded slopes shall be selected and designed to be compatible with surrounding natural vegetation or to replace removed natural vegetation and should recognize climatic, soil, and ecologic characteristic of the region. Plan materials that require excessive water after becoming established should be avoided.	<b>Conforms &amp; Condition of Approval.</b> As proposed, landscaping is compatible with the surrounding natural vegetation. To ensure final landscaping conformance, this is included as a condition of approval.
Trees which have a six inch or greater diameter trunk size at a point three feet above grade should not be removed. The location of all such trees shall be shown on all plans submitted for approval. The Planning Commission, upon review of an “S” Zone application approval, shall have the power to authorize removal, relocation or replacement if the applicant can show that such requirement is unreasonable as applied to the particular property. If the removal is permitted, the replacement of any trees removed pursuant to this section shall be at a five to one (5:1) ratio.	<b>Condition of Approval.</b> Applicant is not proposing to remove any trees at this time. To ensure conformance, this is included as a condition of approval.
Within six months, or such other period established by the Planning Commission, after the commencement of grading activities, all graded areas not covered by an impervious surface shall be stabilized in such manner as shall be approved by the Community Development Manager.	<b>Condition of Approval.</b> The applicant has submitted preliminary grading plans. To ensure conformance, this is included as a condition of approval.
Where two cut-or-fill slopes intersect, the intersection shall be horizontally rounded and blended.	<b>Condition of Approval.</b> The applicant has submitted preliminary grading plans. To ensure

Grading and Landscape	Conformance
	final grading conformance, this is included as a condition of approval.
Where any cut-or-fill slopes intersect the natural grade, the intersection of each slope shall be vertically and/or horizontally rounded and blended.	<b>Condition of Approval.</b> The applicant has submitted preliminary grading plans. To ensure final grading conformance, this is included as a condition of approval.



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve and Authorize the Interim City Manager to execute a Public Highway At-Grade Rail Crossing Agreement with Union Pacific Railroad Company for South Milpitas Boulevard rail crossing and signal improvements, and authorize payment to Union Pacific Railroad not to exceed \$750,000 for the cost of the improvements</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	<b>Steve Chan, 408-586-3324</b>
<b>Recommendation:</b>	Approve and authorize the Interim City Manager to execute a Public Highway At-Grade Rail Crossing Agreement with Union Pacific Railroad Company for South Milpitas Boulevard rail crossing and signal improvements and authorize payment to Union Pacific Railroad not to exceed \$750,000 for the cost of the improvements.

### **Background:**

On August 18, 2009, the City Council approved a Cost Sharing and Reimbursement Agreement ("Cost Share Agreement") between the City of Milpitas, Milpitas Station, LLC, Southside Industrial Park, and SCS Development Company to facilitate construction of public improvement infrastructure within the City's Transit Specific Plan Area (TASP) including new public streets, utility undergrounding, Union Pacific Railroad (UPRR) crossing improvements, and traffic signal improvements at the South Milpitas Boulevard/Garden Street intersection.

A Union Pacific railroad spur crosses South Milpitas Boulevard between Montague Expressway and Garden Street. UPRR completed installation of concrete crossing panels approximately two years ago. It is desired to continue to upgrade and improve this old rail crossing for safety with installation of crossing gates and interconnection with the City's traffic signal at Garden Street and South Milpitas Boulevard. Currently the City's traffic signal is not interconnected with the UPRR crossing, and the signal is set to operate in flash mode for safety, which is not an efficient use of the traffic signal system.

The execution of an agreement (Public Highway At-Grade Rail Crossing Agreement) between the City and UPRR is required for the installation of the rail crossing and traffic signal improvements, which are to be constructed by UPRR crews. The estimated cost of the improvements is \$750,000 including a contingency for Union Pacific locomotive flagging costs, and UPRR has provided and estimated a schedule of 9 months to complete the improvements.

### **Analysis:**

The execution of a Public Highway At-Grade Rail Crossing Agreement with UPRR is required for the installation of the desired crossing improvements and interconnection with the traffic signal system on South Milpitas Boulevard. The agreement will require the City to pay UPRR for the work when construction is complete. City funding for the UPRR work will come from private developer funds deposited with the City.

The Pulte Home Corporation ("Developer"), the successor to Milpitas Station, LLC, has agreed to pay all required costs associated with the rail crossing and traffic signal improvements as identified in the August 18, 2018 Cost Share Agreement. The cost to install the crossing improvements is estimated at \$750,000 with contingency for locomotive flagging. However, the actual cost of the work will be determined by UPRR up

completion of construction work. Pulte Home Corporation opened a Private Jobs Account (PJ1211) with the City as part of the development process and will deposit funding for the UPRR work with the City.

The UPRR Agreement also requires the City to compensate UPRR \$8,670 annually for UPRR maintenance of the crossing and signal system at this crossing. The annual maintenance cost will increase on an annual basis at a rate based on the America Association of Railroads (AAR) signal unit cost, which is like a construction cost index. Currently, the AAR signal unit cost index amount is 7.7% annually.

To permit completion of the needed rail crossing improvements at South Milpitas Boulevard including activation of the traffic signal at Garden Street, staff recommends the City Council approve and authorize the Interim City Manager to execute the Public Highway At-Grade Rail Crossing Agreement with UPRR, and to authorize payment to Union Pacific Railroad for the cost of the crossing and signal improvement work, estimated not to exceed \$750,000.

**Policy Alternative:**

Alternative: Do not execute the Public Highway At-Grade Rail Crossing Agreement with UPRR and not proceeding with improvement of the South Milpitas rail crossing.

Pros: None

Cons: The existing signal at South Milpitas Boulevard is not improved, does not have crossing safety gates, and is not coordinated and interconnected with the City's South Milpitas Boulevard traffic signal at Garden Street. The execution of the agreement and payment of associated costs is required to improve the crossing.

Reason not recommended: The improvement of the rail crossing at South Milpitas Boulevard including the coordination and interconnection with the Garden Street traffic signal is desired to improve safety and the crossing and to improve operation of the traffic signal to facilitate the orderly and safe flow of vehicular traffic.

**Fiscal Impact:**

The Pulte Group, Developer for the Metro residential development project will deposit funding with the City for the completion of the UPRR improvements. Upon completion of construction, the City will compensate UPRR from Developer funding deposited in the developers account, PJ1211. The City would also responsible to compensate UPRR \$8,670 annually for UPRR maintenance of the crossing and signal system. The annual maintenance cost will increase on an annual basis at a rate based on the America Association of Railroads (AAR) signal unit cost, which is currently 7.7% per year. Funding for the UPRR annual maintenance cost will be from the City's General Fund.

**California Environmental Quality Act:**

The project is exempt under Section 15301 (Existing Facilities) of the CEQA guidelines.

**Recommendations:**

1. Approve and authorize the Interim City Manager to execute a Public Highway At-Grade Rail Crossing Agreement with Union Pacific Railroad Company for South Milpitas Boulevard rail crossing and signal improvements.
2. Authorize payment to Union Pacific Railroad not to exceed \$750,000 for the cost of the improvements.

**Attachments:**

- 1) Cost Sharing and Reimbursement Agreement
- 2) UPRR Public Highway At-Grade Rail Crossing Agreement

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Milpitas Blvd.  
DOT 833901Y  
11.746 – Milpitas Ind. Ld.,  
Milpitas, Santa Clara County, CA

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **City of Milpitas**, a municipal corporation or political subdivision of the State of California to be addressed at 435 East Calaveras Blvd., Milpitas, CA 95035 ("Political Body").

**RECITALS:**

Presently, the Political Body utilizes the Railroad's property for the existing at-grade public road crossing over Milpitas Blvd., DOT Number 833901Y at Railroad's Milepost 11.746 on Railroad's Milpitas Ind. Ld. at or near Milpitas, Santa Clara County, California.

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening, including the installation of a new sidewalk on the west and new curbs and gutters on both sides of the of the existing at-grade public road crossing, and the interconnection of the at-grade public road crossing traffic signals with Railroad circuitry. The road crossing, as reconstructed and widened is hereinafter the "Roadway."

The Railroad right of way being utilized for the existing Milpitas Blvd. at-grade public road crossing is not sufficient to allow for the reconstruction and widening of the Roadway, including the installation of a new sidewalk on the west and new curbs and gutters on both sides of the of the existing at-grade public road crossing. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway (including the right of way being utilized for the existing at grade crossing) is shown on the Railroad's location print marked **Exhibit A**, described as Sidewalk Crossing Area and New curb and Gutter Area, being attached hereto and hereby made a part hereof (the "Crossing

Area”).

In support of its Project, the Political Body has requested the Railroad’s cooperation in connection with installing or upgrading grade crossing protection devices, installing highway traffic control signals and installing the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said work is to be performed at the sole expense of Political Body.

The Railroad and the Political Body are entering into this Agreement to cover the above.

### **AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

#### **Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

#### **Section 2. RAILROAD GRANTS RIGHT**

For and in consideration of the sum of **TEN THOUSAND DOLLARS (\$10,000.00)** be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body’s agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad’s property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

#### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term “Contractor” shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad’s property and shall also include the Contractor’s subcontractors and the Contractor’s and subcontractor’s respective employees, officers and agents, and others acting under its or their authority.

#### **Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UP File Folder No. 3118-91

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **Section 5. FEDERAL AID POLICY GUIDE**

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

#### **Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Political Body agrees that no Project costs and expenses are to be borne by

the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

**Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Two Railroad's Material and Force Account Estimates marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **Twenty Thousand One Hundred Fifty Five Dollars** (\$20,155) and **Six Hundred Fifty Four Thousand Seven Hundred Dollars** (\$654,700).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. The Political Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

## **Section 8. PLANS**

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

## **Section 9. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new

agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

#### **Section 10. EFFECTIVE DATE; TERM; TERMINATION**

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

#### **Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iii) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

## **Section 12. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

## **Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

## **Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

## **Section 15. SIGNAL PREEMPTION**

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic

control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

## **Section 16. SIGNAL MAINTENANCE COSTS**

A. Effective as of the Effective Date of this Agreement, the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of Eight Thousand Six Hundred Seventy Dollars (\$8,670.00) per annum, payable annually in advance, as payment for Railroad's maintenance of the railroad crossing warning signals that are to be installed by the Railroad at the Crossing Area.

B. The above annual fee is based on the number of current signal units at the Crossing Area. Effective on the first anniversary of this Agreement and on the anniversary date of each subsequent one year period, the annual fee will be increased at a rate based on the American Association of Railroad's (AAR) signal unit cost index. Such changes in the maintenance fee may be made by the Railroad by means of automatic adjustment in billing. The signal unit base for the annual fee may be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual rental was last determined or established. Such changes in the maintenance fee may be made by means of automatic adjustment in billing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID #94-6001323)

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF MILPITAS**




By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A** will be a print showing the Crossing Area (see Recitals)



**LEGEND:**

EXISTING CROSSING AREA .....	
EXISTING CROSSING AREA = 990 SO. FT. +/-	
SIDEWALK CROSSING AREA .....	
SIDEWALK CROSSING AREA = 125 SO. FT. +/-	
NEW CURB AND GUTTER AREA .....	
NEW CURB AND GUTTER AREA = 62 SO. FT. +/-	
UPRR CO. R/W OUTLINED .....	-----

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MILPITAS, SANTA CLARA COUNTY, CA

M.P. 11.75 - MILPITAS IND. LEAD

WP CA V-12 / 4

SCALE: 1" = 50'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 8-8-201

PJB FILE: 0311891

CADD FILENAME	0311891
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SCAN FILENAME	x
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**EXHIBIT B  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating

property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

## **SECTION 2. CONSTRUCTION OF ROADWAY**

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

### **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

### **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

### **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

### **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental

thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

## **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill

Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal

Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice

President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except

holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

## **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

## **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

## **SECTION 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

## **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**AREMA UNIT STATEMENT OF RAILROAD HIGHWAY GRADE CROSSING SIGNALS  
ESTIMATED MAINTENANCE COSTS**



**BUILDING AMERICA®**

**FOR PID # 101796  
BY THE UNION PACIFIC RAILROAD**

<b>STREET</b>	<b>MILPITAS BLVD</b>
<b>TOWN</b>	<b>MILVITAS, CA</b>
<b>MILEPOST</b>	<b>11.74</b>
<b>SUBDIVISION</b>	<b>MILPITAS IND LD</b>
<b>AAR/DOT NO.</b>	<b>833901Y</b>
<b>WORK ORDER#</b>	<b>38627</b>

<b>DESCRIPTION</b>	<b>VALUE</b>	<b>QUANTITY</b>	<b>UNITS</b>
<b>NON-CODED TRK. CIRCUIT</b> (Standalone AFTAC or Ring 10)	<b>2</b>	<b>0</b>	<b>0</b>
<b>SUPERIMPOSED CIRCUIT(AFTAC) /</b> <b>DETECTION LOOP</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>HIGHWAY GRADE CROSSING SIGNAL</b> (FRONT LIGHTS)	<b>2</b>	<b>4</b>	<b>8</b>
<b>ADDITIONAL PAIR OF LIGHTS</b> (OTHER THAN FRONT LIGHTS)	<b>1</b>	<b>2</b>	<b>2</b>
<b>GATE MECHANISM, AUTOMATIC</b> <b>WITH ARM UP TO 26 FT</b>	<b>8</b>	<b>0</b>	<b>0</b>
<b>GATE MECHANISM, AUTOMATIC</b> <b>WITH ARM OVER 26 FT</b>	<b>10</b>	<b>2</b>	<b>20</b>
<b>GCP/HXP (constant warning device, per track circuit)</b>	<b>15</b>	<b>1</b>	<b>15</b>
<b>EXIT GATE MANAGEMENT SYSTEM RACK*</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>MOVEMENT DETECTOR (PMD)</b>	<b>6</b>	<b>0</b>	<b>0</b>
<b>MOVEMENT DETECTOR (STANDBY UNIT)</b>	<b>3</b>	<b>0</b>	<b>0</b>
<b>RADIO DATA LINK, PER UNIT</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>PREEMPTION CIRCUIT</b>	<b>2</b>	<b>1</b>	<b>2</b>
<b>DATA RECORDER</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>REMOTE MONITORING DEVICE (SEAR, ETC)*</b>	<b>2</b>	<b>1</b>	<b>2</b>
<b>BONDED RAIL JOINTS (per mile, each rail, single bonded)</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>BATTERY AND CHARGER (per set)</b>	<b>1</b>	<b>2</b>	<b>2</b>

**TOTAL UNIT COUNT** **51**

**PAVEMENT RESTORATION COSTS** **(Actual)**

Annual Maintenance Cost at \$170/Unit **\$8,670**

\*UP supplied Unit Value

June 5, 2018

**EXHIBIT C**  
**TO**  
**PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit C** (if applicable) will be Railroad's Material and Force Agreement Estimate.

DATE: 2018-07-11

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2019-01-09

## DESCRIPTION OF WORK:

MILPITAS, CA / MILPITAS BLVD. / MILPITAS IND LD MP 11.74  
ADD 16' TO EXISTING CROSSING SURFACE. \*CURVED NON STANDARD RDX PANELS.  
PROJECT WAS BUILT USING FED ADDITIVE W/ OVERHEAD AND INDIRECT 234%  
UPRR WILL BE REIMBURSED FOR 100% OF COSTS BY THE CITY/STATE/FED FUNDING

PID: 108474 AWO: MP,SUBDIV: 11.75, MILPITASIN  
SERVICE UNIT: 19 CITY: WARM SPRINGS STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
-----	---	----	-----	-----	-----	-----	-----
ENGINEERING WORK							
ENGINEERING			1548		1548		1548
LABOR ADDITIVE 234%			3623		3623		3623
			-----		-----		-----
TOTAL ENGINEERING			5171		5171		5171
SIGNAL WORK							
LABOR ADDITIVE 234%			628		628		628
SIGNAL			320	5	325		325
			-----		-----		-----
TOTAL SIGNAL			948	5	953		953
TRACK & SURFACE WORK							
BILL PREP FEE				900	900		900
ENVIRONMENTAL PERMIT				10	10		10
FOREIGN LINE FREIGHT				88	88		88
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 234%			5835		5835		5835
RDXING	16.00	TF	3694	2504	6198		6198
SALES TAX				100	100		100
			-----		-----		-----
TOTAL TRACK & SURFACE			9529	4502	14031		14031
-----							
LABOR/MATERIAL EXPENSE			15648	4507	-----	-----	-----
RECOLLECTIBLE/UPRR EXPENSE					20155	0	-----
ESTIMATED PROJECT COST							20155

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

# Material And Force Account Estimate

## CITY OF MILPITAS

Estimate Creation Date: 06/05/2018    Number: 117603    Version: 1

Estimate Good for 6 Months Until 12/05/18

Location: MILPITAS IND LD, CROS, 10.15-10.19

Buy America: Yes

Description of Work: MILPITAS, CA, MILPITAS BLVD, M.P. 11.74, MILPITAS INDUSTRIAL LEAD, DOT#833901Y, WO#38627, PID#101796, (100% RECOLLECTABLE)

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
<b>SIGNAL</b>							
	Xing - Engineering Design	1	LS	6,183.00	6,183	0	6,183
	Xing - 1 Trk CWE w/Gates	1	EA	131,584.00	41,200	90,384	131,584
	Xing - Cantilever Arm >40'	54	LF	800.00	0	43,200	43,200
	Xing - Cantilever Mast <37' Cant	2	EA	23,613.00	37,500	9,726	47,226
	Xing - Contract Services for Preempt Cutover	1	LS	20,000.00	0	20,000	20,000
	Xing - Flasher/Ped (pair)	0.5	LS	57,560.00	8,000	20,780	28,780
	Xing - Location Removal (Gates/Cants)	1	LS	4,000.00	4,000	0	4,000
	Xing - Boring	1	LS	40,000.00	0	40,000	40,000
	Xing - Fill/Rock/Gravel	1	LS	5,000.00	0	5,000	5,000
	Xing - Meter Service	1	LS	25,000.00	0	25,000	25,000
TRAFFIC CONTROL	Xing - Misc.	1	LS	10,000.00	0	10,000	10,000
FEDERAL 190.55% (SIG)	Xing - Labor Additive	1	LS	184,610.56	184,611	0	184,611
<b>Sub-Total =</b>					<b>281,494</b>	<b>264,090</b>	<b>545,584</b>

### PROJECT LEVEL COST

	Contingency	20	%	5,455.84	56,299	52,818	109,117
<b>Sub-Total =</b>					<b>56,299</b>	<b>52,818</b>	<b>109,117</b>

**Totals =        337,792    316,908    654,700**

**Grand Total =                    \$654,700**

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CITY OF MILPITAS will pay actual construction costs at the current rates effective thereof.

**EXHIBIT D**  
**TO**  
**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

**CONTRACTOR'S**  
**RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and  
\_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor").

**RECITALS:**

Contractor has been hired by \_\_\_\_\_ to perform work relating to \_\_\_\_\_

\_\_\_\_\_ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost \_\_\_\_\_ on Railroad's \_\_\_\_\_ [Subdivision] [Branch] [at or near DOT No. \_\_\_\_\_] located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

**AGREEMENT:**

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.**

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 6 - TERM; TERMINATION.**

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

\_\_\_\_\_  
[Insert mailing address]

\_\_\_\_\_  
Attn: \_\_\_\_\_  
Folder No. \_\_\_\_\_

**ARTICLE 8 - DISMISSAL OF CONTRACTOR's EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11.- EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

Exhibit A will be a print showing the general location of the work site.

**EXHIBIT B**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

**Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be

freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

## **Section 7.     SAFETY.**

A.     Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B.     Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C.     Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D.     If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

## **Section 8.     INDEMNITY.**

A.     To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B.     The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

**C.     Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.**

D.     No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

**EXHIBIT C**  
**TO**  
**CONTRACTOR'S**  
**RIGHT OF ENTRY AGREEMENT**

**Union Pacific Railroad Company**  
**Insurance Provisions For**  
**Contractor's Right of Entry Agreement**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to

this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

### **Other Requirements**

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT D**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

**I. Clothing**

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
  -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

**III. On Track Safety**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. Equipment**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. General Safety Requirements**

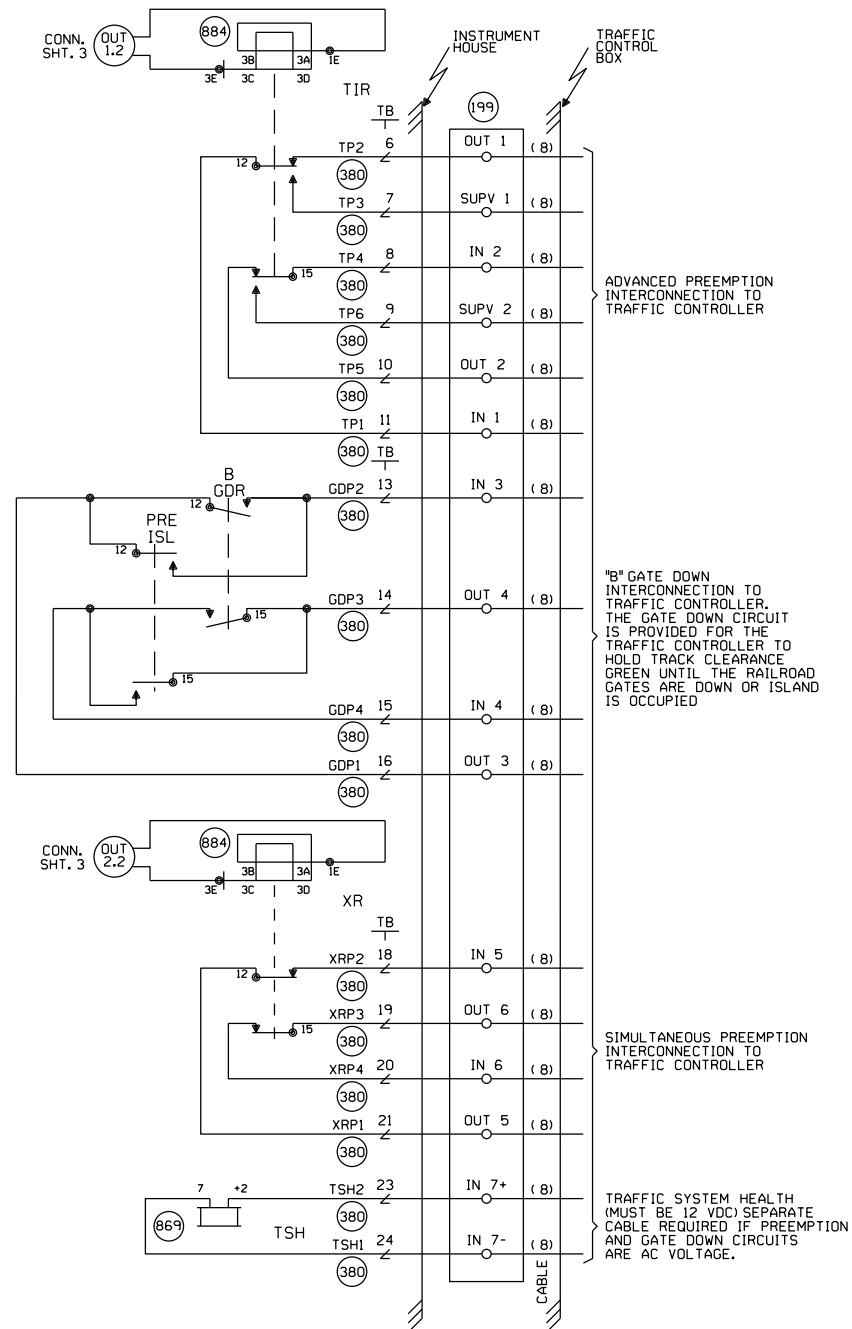
- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.

- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

**EXHIBIT E  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit E** will be signal design schematic





CABLE NO. 8 U.G.B.T. HOUSE TO TRAFFIC CONTROLLER

**NEW SHEET**

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Office of AVP Engineering - Signal  
Omaha, Nebraska



Fees.....	279.00
Taxes.....	
Copies.....	
AMT PAID	279.00

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

Foley & Lardner LLP  
402 West Broadway, Suite 2100  
San Diego, CA 92101  
Attn: Richard L. Moskitis, Esq.

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
First American Title Company

RDE # 003  
9/10/2009  
8:00 AM

*NCS-356002-SC*

(SPACE ABOVE FOR RECORDER'S USE)

APNs: 086-32-033 through -040

**COST SHARING AND REIMBURSEMENT AGREEMENT**

**(Milpitas Transit Area Specific Plan –  
Piper/Montague Subdistrict – Milpitas, California)**

## **COST SHARING AND REIMBURSEMENT AGREEMENT**

### **(Milpitas Transit Area Specific Plan – Piper/Montague Subdistrict – Milpitas, California)**

THIS COST SHARING AND REIMBURSEMENT AGREEMENT ("Agreement"), dated for reference purposes as of Aug 18, 2009, is made by and between the CITY OF MILPITAS, a California municipal corporation ("City"), MILPITAS STATION, LLC, a California limited liability company ("MS"), SOUTHSIDE INDUSTRIAL PARK, a California general partnership ("SI") and SCS DEVELOPMENT CO., a California corporation, dba Citation Homes Central ("Citation") (MS, SI and Citation are sometimes collectively referred to herein as the "Owners," and singularly as an "Owner") (the Owners and the City are each individually referred to herein as a "Party" and collectively referred to herein as the "Parties"), with reference to the following:

#### **RECITALS**

A. The Owners own various parcels of improved and unimproved land located in the Piper/Montague Subdistrict (the "Subdistrict") of the Milpitas Transit Area Plan, Santa Clara County, State of California, as approved by the Milpitas City Council (the "City Council") on June 3, 2008 (the "Specific Plan").

B. SI is currently the owner of two (2) parcels of real property located within the Subdistrict (APNs 086-32-038 and 086-32-039) containing approximately 4.307 gross acres (the "Current SI Parcels"), as more particularly described on Exhibit A attached hereto and incorporated herein.

C. Citation is currently the owner of two (2) parcels of real property adjacent to the Current SI Parcels located within the Subdistrict (APNs 086-32-037 and 086-32-040) containing approximately 15.984 acres (the "Current Citation Parcels"), as more particularly described on Exhibit B attached hereto and incorporated herein.

D. MS is currently the owner of those certain adjacent parcels of real property located within the Subdistrict (APNs 086-32-033, 086-32-034, 086-32-035 and 086-32-036) containing approximately 13.85 acres (the "Current MS Parcels"), as more particularly described on Exhibit C attached hereto and incorporated herein. The Citation Parcels, along with the SI Parcels and the MS Parcels, are sometimes collectively referred to herein as the "Parcels," and singularly as a "Parcel."

E. Citation has granted MS the option to acquire one of the Current Citation Parcels commonly referred to as APN 086-32-040 and described on Exhibit B as it may be adjusted pursuant to a final subdivision map or lot line adjustment (the "Citation Option Parcel"). MS and SI have entered into an agreement to trade one of the Current MS Parcels described as Parcel 1B on Exhibit C (APN 086-32-035) ("Parcel B") for the Current SI Parcels. MS has granted to SI the option to acquire one of the Current MS Parcels described as Parcel 1A on Exhibit C (APN 086-32-036) ("Parcel A"). The Current MS Parcels minus Parcel A and Parcel B, plus the

Current SI Parcels, plus the Citation Option Parcel are referred to herein as the “MS Parcels.” The Current Citation Parcels minus the Citation Option Parcel are referred to herein as the “Citation Parcel.” Parcel A and Parcel B are referred to herein as the “SI Parcels.”

F. By Resolution No. 09-001, the City has approved Major Tentative Map No. MT08-0004 in connection with the Citation Parcel (the “Citation Tentative Map”). The resolution approving the Citation Tentative Map contains numerous “Conditions of Approval.” Condition Nos. 19 and 20 (a copy of which is attached hereto as Exhibit D) require Citation to bond, construct and/or pay for certain public infrastructure improvements and enter into a development agreement with MS and SI (the “Citation Public Improvement Conditions”). Execution of this Agreement by all parties and recording of the Agreement shall constitute full satisfaction of said Condition No. 20. The Parties agree that this Agreement shall be executed and recorded promptly after approval by the City Council. By Resolution No. 7786, the City has approved Minor Tentative Map No. TM08-0001 in connection with the MS Parcels (the “MS Tentative Map”, together with the Citation Tentative Map, the “Tentative Maps”). The resolution approving the MS Tentative Map contains numerous “Conditions of Approval” (the “MS Conditions of Approval”). Condition Nos. 1, 5, 7, 8, 9, 11, 25 and 26 (a copy of which is attached hereto as Exhibit E) require MS to bond, construct and/or pay for certain public infrastructure improvements and post bonds for construction of certain public improvements (the “MS Public Improvement Conditions”). The Citation Public Improvement Conditions and the MS Public Improvement Conditions are jointly referred to herein as the “Conditions of Approval.”

G. As contemplated and/or required by the Conditions of Approval for both the Citation Tentative Map and the MS Tentative Map, the Parties desire to provide for (i) the construction of certain shared infrastructure improvements to be constructed in the Subdistrict as described/depicted and cost estimated on Exhibit F attached hereto (the “Shared Infrastructure Improvements”) in conformance with applicable requirements of the City, (ii) the reimbursement of the costs and expenses of the Owner(s) that construct(s) the Shared Infrastructure Improvements by the other Owners on the terms and conditions set forth herein, and (iii) the reimbursement, by way of direct Owner payments or the issuance of public bonds, of City advances or credits to Owner(s) that construct initial improvements.

H. The Parties also desire to provide for (i) the construction of certain improvements to Milpitas Boulevard, as described/depicted and cost estimated on Exhibit G attached hereto (the “City Improvements”), (ii) the construction of certain shared storm water management facilities, as described/depicted and cost estimated on Exhibit I attached hereto (the “Storm Water Facilities”) including a media filter component (the “Media Filter”), and (iii) the design, dedication and construction of improvements for an approximately 3.3 acre public park in the Subdistrict (the “Public Park”), as required by the Conditions of Approval.

I. The Parties acknowledge that none of the obligations and provisions stated herein are intended to create any additional vested rights (beyond those created by the Specific Plan and Tentative Maps) or otherwise constitute a “development agreement” pursuant to California Government Code Sections 65864-65869.5, and City of Milpitas Resolution No. 6642, as amended.

J. The Parties agree that this Agreement shall run with the land described herein.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

### **ARTICLE 1**

#### **EASEMENTS/DEDICATIONS**

Subject to Section 7.2 below, each Owner shall execute, in favor of the other Owners and/or the City or other governmental agency or public or private utility, all easements or dedications (including offers of dedication) which are reasonably necessary for or reasonably requested by the City or any other Owner in connection with the construction of the Shared Infrastructure Improvements as set out on Exhibit F or the Storm Water Facilities as set out on Exhibit I or the Public Park Improvements, at no cost or charge to the other Owners, and in such form as is reasonably acceptable to the executing Party. Fully executed originals of such documents, ready for recording if applicable, shall be delivered by the applicable Owner to the other Owner and/or City and/or other agency or utility within ten (10) days after receipt of a written request from the other Owner and /or City and/or other agency or utility which request shall include the documents to be executed. The Owners understand, acknowledge and agree that the value of the land that they are respectively required to dedicate for the Shared Infrastructure Improvements and/or Storm Water Facilities pursuant to this Article 1 has been taken into account in arriving at the respective cost sharing/reimbursement obligations set forth in Article 3 below. Land dedications for the Public Park site shall be governed by Article 4 below and applicable City of Milpitas ordinances and resolutions.

### **ARTICLE 2**

#### **CONSTRUCTION OF SHARED INFRASTRUCTURE IMPROVEMENTS**

2.1. Phasing of Shared Infrastructure Improvements. The Parties acknowledge that the desired project schedules and phasing plans for each project within the Subdistrict may differ. As such, the Parties agree that no single Owner is under any obligation to construct the entirety of the Shared Infrastructure Improvements and/or Storm Water Facilities. An Owner desiring to be a Constructing Owner (as defined below) shall construct all or any portion of the Shared Infrastructure Improvements and/or Storm Water Facilities (each, a “Phase”) deemed necessary by the City pursuant to a phasing plan submitted by the Constructing Owner to the City and reasonably approved by the City prior to the commencement of construction, as described in Section 2.2.1.

2.2. Construction of Shared Infrastructure Improvements. Provided all necessary dedications, easements, permits, approvals and licenses required to construct the Shared Infrastructure Improvements and/or Storm Water Facilities in question have been obtained, the Owners hereby grant to the Constructing Owner the right to construct one or more Phases of the Shared Infrastructure Improvements and/or Storm Water Facilities in accordance with this

Agreement. For the purposes of this Agreement, the “Constructing Owner” shall be the Owner which desires to first or next proceed with the development of the Owner’s Parcel(s). No Owner shall become a Constructing Owner unless the Owner has first given thirty (30) days prior written notice of the Owner’s intention to become a Constructing Owner to the other Owners and the City. An Owner subsequently completing or constructing additional Phases of the Shared Infrastructure Improvements and/or Storm Water Facilities shall also be a “Constructing Owner” for purposes of this Agreement and the provisions of this Agreement shall apply to the design, permitting and construction of all such Shared Infrastructure Improvements and/or Storm Water Facilities.

2.2.1. Preparation of Plans. The scope of the Shared Infrastructure Improvements design shall consist of all items set forth in Exhibit F and shall be further defined in those final plans and specifications submitted to and approved by the City in the normal course of public infrastructure review and approval. The scope of the Storm Water Facilities design shall consist of all items set forth in Exhibit I and shall be further defined in those final plans and specifications submitted to and approved by the City in the normal course of public infrastructure review and approval. The Parties agree that the Constructing Owner shall be responsible for the design and construction of the entirety of the Phase of the Shared Infrastructure Improvements and/or Storm Water Facilities said Constructing Owner seeks to install. The Constructing Owner shall be responsible for hiring the necessary consultants (civil engineer, landscape architect, etc.) and managing the design and approval process with the City. The non-constructing Owners shall have the right to review and approve all plans and documents prior to the Constructing Owner submitting plans to the City, said approval (including consideration of coordination with future phasing) not to be unreasonably withheld, conditioned or delayed. Any non-constructing Owner which disapproves the plans shall indicate in writing the reason(s) for the disapproval. After actual receipt of plans and documents, with written notification of the expiration of the applicable review period, any non-constructing Owner that does not approve or disapprove proposed plans and documents by giving written notice thereof to the Constructing Owner within fifteen (15) business days of such receipt shall be deemed to have approved such plans and documents, but only insofar as the submitted plans and specifications comply with the terms and conditions of this Agreement. Such plans and specifications, as approved (or deemed approved) by the non-constructing Owners and the City, are referred to herein as the “Plans.” The Constructing Owner shall cause the Shared Infrastructure Improvements and/or Storm Water Facilities in question to be constructed in substantial conformance with the Plans. The non-constructing Owners shall cooperate fully with the Constructing Owner to provide any information that may be reasonably required in order to complete the Shared Infrastructure Improvements and Storm Water Facilities in question in substantial conformance with the Plans, including, but not limited to, executing any applications, letters, dedications, offers of dedication, or other documentation required by the City and/or other agency or utility.

2.2.2. Permits and Bonds. The Constructing Owner shall process and obtain all permits and approvals of the City and any other governmental authorities required to construct the Shared Infrastructure Improvements and/or Storm Water Facilities in accordance with the Plans. If required by the City or any non-constructing Owner, the Constructing Owner shall provide payment and performance bonds (naming the City and each non-constructing Owner as

beneficiaries) to guarantee such construction and the payment of all construction costs arising thereunder.

2.2.3. Construction and Consultant Contracts. For all contracts related to the design or construction of the Shared Infrastructure Improvements or Storm Water Facilities that are in excess of Fifty Thousand Dollars (\$50,000), the Constructing Owner shall provide a draft of such contract to the non-constructing Owners, allowing ten (10) business days after receipt in which to review and comment on such proposed contract prior to the Constructing Owner entering into such contract. Absent proof of competitive bidding, any non-constructing Owner may require that the Constructing Owner obtain at least three (3) competing bids for the proposed work under any such contract. Change orders (and all change orders thereafter) that cumulatively with previous change orders result in costs for the Phase of the Shared Infrastructure Improvements in question or Storm Water Facilities increasing by greater than ten percent (10%) above initial contracted pricing shall be subject to the approval of the non-constructing Owners, said approval not to be unreasonably withheld, conditioned or delayed. Following the completion of the work in question, the Constructing Owner shall provide copies of final invoices, records, change orders, payment invoices and other documents reasonably requested by any non-constructing Owner.

2.2.4. Compliance with Laws. The Constructing Owner shall cause the Phase in question to be completed in compliance with all permits issued in connection with the Shared Infrastructure Improvements and/or Storm Water Facilities in question and all other governmental laws, ordinances, rules, regulations and requirements, including, but not limited to, any public contracting requirements (collectively, "Laws") in connection with all work performed in connection with the Shared Infrastructure Improvements and Storm Water Facilities in question.

2.2.5. Construction Work. The Constructing Owner shall cause the Shared Infrastructure Improvements and Storm Water Facilities in question to be constructed in substantial conformance with the Plans and in conformance with all applicable Laws.

2.2.6. Completion. Following commencement of construction of the Shared Infrastructure Improvements and/or Storm Water Facilities in question, the Constructing Owner shall cause the construction of such Shared Infrastructure Improvements and/or Storm Water Facilities to be pursued until Completion (defined herein) with commercially reasonable diligence. The terms "Completion" and "Complete" mean the date when all of the following conditions have been satisfied.

2.2.6.1 Completion of construction of the Shared Infrastructure Improvements and/or Storm Water Facilities in question in substantial conformance with the Plans;

2.2.6.2 Recordation of a Notice of Completion pursuant to California Civil Code Section 3093 with respect to the construction of the Shared Infrastructure Improvements and/or Storm Water Facilities in question; and

2.2.6.3 Delivery to the other Owners and the City of the Notice of Completion by the Constructing Owner.

Notwithstanding Completion as set forth above, the Constructing Owner shall be responsible for obtaining acceptance of the Shared Infrastructure Improvements and/or Storm Water Facilities work in question by the City (and any other appropriate utilities and/or agencies, if applicable) and obtaining the release of all bonds relating thereto. Owners hereby agree to cooperate in facilitating acceptance of the Shared Infrastructure Improvements and/or Storm Water Facilities by the City and acceptance of the dedication thereof by the City. The Constructing Owner shall also cause the Shared Infrastructure Improvements and/or Storm Water Facilities installed by it to be maintained and all slope maintenance and erosion control measures to be performed as required by the City for the maintenance period specified by the City.

2.2.7. Payment of Costs. The Constructing Owner shall pay, in a timely manner, all costs and expenses associated with the construction of the Shared Infrastructure Improvements and Storm Water Facilities performed by it, subject to reimbursement of a portion of those costs and expenses in accordance with Article 3 below. The Constructing Owner agrees to keep the other Owner's Parcel(s) free and clear of all mechanic's and materialman's liens (or bond over same) on account of Shared Infrastructure Improvements and/or Storm Water Facilities installed by it, materials provided or services rendered for the Constructing Owner or persons claiming under or through the Constructing Owner.

2.2.8. Cessation of Work. In the event the Constructing Owner, prior to completion, ceases to perform work on the Shared Infrastructure Improvements or Storm Water Facilities or Public Park Improvements in question with commercially reasonable diligence, the City and/or a non-constructing Owner shall have the right to give notice to the Constructing Owner and any other non-constructing Owners of such default (a "Default Notice"). If the Constructing Owner does not (i) resume construction with commercially reasonable diligence within thirty (30) days after receipt of the Default Notice and thereafter continuously use commercially reasonable diligence to complete the work in question, or (ii) dispute in writing the correctness of the Default Notice within ten (10) days after receipt of the Default Notice, such Constructing Owner shall be deemed to be a "Defaulting Owner" for the purposes of this Section 2.2.9, and any of the non-constructing Owners shall have the right, but not the obligation, to take over the completion of the Shared Infrastructure Improvements or Storm Water Facilities or Public Park Improvements in question, in which event, in addition to any credits towards PMIP and TASP Fee obligations allowed pursuant to this Agreement, the following provisions shall apply: (a) the Defaulting Owner shall not be entitled to any Management Fee (as defined in Section 3.1 below) for any of the work for the entire Phase (or Storm Water Facilities or Public Park Improvements) in question; (b) the non-constructing Owner taking over the completion of the Phase (or Storm Water Facilities or Public Park Improvements) in question shall receive the Management Fee for the entire Phase (or Storm Water Facilities or Public Park Improvements) in question, not just the portion of such Management Fee allocable to the work necessary to complete the Phase (or Storm Water Facilities or Public Park Improvements); and (c) any non-constructing Owner that elects to take over completion shall be (A) entitled to make a claim against any bond provided by the Defaulting Owner, and all Owners shall cooperate in securing payment for completion of such work under the terms of such bond (and the payments under such bonds made to any Party or Parties shall be the "Bond Payments"), and (B) entitled to full

credit under Article 3 and/or Article 4 (in the place and stead of the Defaulting Owner) for the prior expenses of the initial Constructing Owner in an amount equal to the difference of (x) the duplicative and/or added costs of taking over the completion of the Phase (or Storm Water Facilities or Public Park Improvements) that would not have been incurred but for the Defaulting Owner's failure to timely complete the work in question, less (y) the Bond Payments received by such non-constructing Owner (such amount determined pursuant to this clause (B) being the "Default Costs"). If the Constructing Owner in receipt of a Default Notice timely disputes the correctness of the Default Notice, the dispute shall be resolved pursuant to Article 10 below. In that event, such initial Constructing Owner shall only be deemed a Defaulting Owner hereunder following resolution of such dispute determining that the Default Notice was correctly given.

2.2.8.1 City Remedies. In the event that, prior to completion of a Phase (or Storm Water Facilities or Public Park Improvements), the City previously issued to a Defaulting Owner any credit against its PMIP obligation or any Shared Infrastructure TASP Fees Credit pursuant to Section 3.2.3 in connection with that Phase, then the City, in addition to all other remedies available to it at law or in equity, shall have the option to immediately collect the Mello-Roos special tax set forth in Article 3 on the Defaulting Owner's Parcels (including, without limitation, its Paid Units) in order to reimburse any and all costs incurred by the City in connection with such Defaulting Owner's failure to complete such Phase (or Storm Water Facilities or Public Park Improvements), including (a) any extensions of credits to offset impact fees and other fees owed to the City by such Defaulting Owner in connection with such Phase (or Storm Water Facilities or Public Park Improvements) in excess of the amount expended by such Defaulting Owner in connection with such Phase (or Storm Water Facilities or Public Park Improvements) that is not reimbursed to the City by Bond Payments, and (b) any extensions of credits to offset impact fees and other fees given by the City to any non-constructing Owner to reimburse such non-constructing Owner for any Default Costs.

## **ARTICLE 3**

### **REIMBURSEMENT OF IMPROVEMENT COSTS**

3.1. Improvement Costs. As used herein, "Improvement Costs" shall mean all costs relating to the Phase of the Shared Infrastructure Improvements in question and Storm Water Facilities, including, but not limited to, hard construction costs, design work, preparation of Plans, engineering, fees and costs associated with processing and issuance of governmental permits and approvals, insurance and bonding costs, maintenance costs, and a management fee to the Constructing Owner equal to seven percent (7%) of design and hard construction costs (the "Management Fee").

3.2. Reimbursement of the Constructing Owner. The Owners acknowledge that all of the Shared Infrastructure Improvements and Storm Water Facilities benefit each Owner's project, and that each Owner bears responsibility for paying a pro-rata share of the costs associated with the Shared Infrastructure Improvements and Storm Water Facilities. In the event that a Constructing Owner installs a Phase or Phases of the Shared Infrastructure Improvements and/or Storm Water Facilities, said Constructing Owner shall be entitled to reimbursement from the non-constructing Owners for the pro-rata share of the total cost of the Phase or Phases of

Shared Infrastructure Improvements and/or Storm Water Facilities installed by the Constructing Owner. Reimbursement shall be facilitated through the following mechanism:

3.2.1. At such time as the initial Constructing Owner has completed the first Phase of Shared Infrastructure Improvements (“Initial Completion Date”), an updated cost estimate will be prepared by the Constructing Owner for the entirety of the Shared Infrastructure Improvements based upon the actual costs incurred by the Constructing Owner in completing the first Phase (an “Updated Cost Estimate”).

3.2.2. The Updated Cost Estimate (and estimated costs to install/complete the Storm Water Facilities if not constructed in total as part of the first Phase for any reason) shall form the basis for a Piper-Montague Infrastructure Payment (“PMIP”) to be collected by the City from all of the Parcels which will be allocated to Citation, MS and SI on a pro-rata basis as set forth below. The Parties acknowledge and aver that under no circumstances shall such payment constitute a developer “impact fee” or other charge subject to the requirements of AB 1600 (the Mitigation Fee Act) or Proposition 218 or a special tax, fee, or charge.

3.2.2.1 For all Shared Infrastructure Improvements: Citation Parcel = 44%; SI Parcels = 30%; MS Parcels = 26%; and

3.2.2.2 For the Storm Water Facilities: Citation Parcel = 31.60%; SI Parcels = 16.11%; MS Parcels = 39.27% (with 1.53% of Storm Water Facilities costs being allocated to the Public Park pursuant to Section 4.5 below, and 11.49% of Storm Water Facilities costs being allocated to the public streets and allocated among the Owners pursuant to the Shared Infrastructure Improvements allocations set forth in Section 3.2.2.1 above and included in the PMIP).

The pro-rated PMIP for each Parcel will be divided by the total number of residential units (each a “Unit”) approved by the City to be constructed within each Parcel and expressed as a per-Unit fee.

In the event that SI does not acquire Parcel A, this Agreement shall remain in full force and effect and the PMIP allocations shall be adjusted as follows: (A) the Shared Infrastructure Improvements allocations shall be Citation Parcel = 44%; Parcel A = 14.3%; Parcel B= 15.7%; MS Parcels = 26%, (B) the Storm Water Facilities allocations shall be Citation Parcel = 31.60%; SI Parcels 6.19%; MS Parcels 49.19%, Public Park 1.53% and Public Streets 11.49%; and (C) the definition of “Parcels” for purposes of this Agreement shall be modified accordingly. In the event that MS does not acquire the Citation Option Parcel, this Agreement shall remain in full force and effect and the allocations contained in Section 3.2.2.1 and Section 3.2.2.2 shall remain unchanged. In the event that MS and SI do not complete the trade of Parcel B for the Current SI Parcels, this Agreement shall be deemed to be void *ab initio*. Furthermore, the trade of Parcel B referenced in Recital E must be completed before the issuance of any credits or cash payments by the City.

3.2.3. The total amount expended by the Constructing Owner on Shared Infrastructure Improvements and Storm Water Facilities shall apply as a credit against that Owner’s PMIP obligation for the number of building permits requested by that party. To the

extent such Owner's expenditures on Shared Infrastructure Improvements and/or Storm Water Facilities exceed said Owner's PMIP obligation for the number of building permits requested, the excess shall apply (i) first, as a credit against that Owner's total Transit Area Specific Plan Impact Fee payable to the City ("TASP Fee") for the number of building permits requested (such credits made pursuant to this clause (i) being the "Shared Infrastructure TASP Fee Credit"), and (ii) any remaining excess as a credit against that Owner's future PMIP and TASP Fee obligations, up to the amount of the Owner's future PMIP and TASP Fee obligations. In the event of future credits under clause (ii), deduction shall be made first from the Owner's PMIP obligation and second from its TASP Fee obligations. The worksheet attached hereto as Exhibit H provides a detailed example of the manner in which the PMIP and Shared Infrastructure TASP Fee Credit would be allocated under the circumstances described herein.

3.2.4. After the completion of the first Phase of the improvements, the Owner which is the Constructing Owner for the next Phase of the improvements, in accordance with Section 2.2 hereof, shall prepare a new cost estimate for all remaining Phases of the improvements which shall be used to update the previous Updated Cost Estimate (either up or down) and the Updated Cost Estimate as so revised shall be used for calculating the PMIP on a go forward basis for all building permits for Units requested by any Owner thereafter.

3.2.5. Under no circumstances shall the City be obligated to make any cash payments to an Owner in the event Shared Infrastructure TASP Fee Credit to such Owner singly or in combination with any other development-related credits, exceed the aggregate amount of an Owner's TASP Fee obligations, provided, however, that such Owner shall be entitled to a credit against other development fees and as permitted by state or local law.

3.2.5.1 Furthermore, no credit shall be issued by the City unless the Owners document in writing to the City's reasonable satisfaction that MS and SI have completed the trade of Parcel B for the Current SI Parcel referenced in Recital E. Copies of the recorded grant deeds effecting the trade shall be deemed to constitute documentation of the trade satisfactory to the City.

3.2.6. Each Owner shall reimburse the City for the City's issuance of Shared Infrastructure TASP Fee Credit to a previous Constructing Owner pursuant to Section 3.2.3 for expenditures by a previous Constructing Owner on Shared Infrastructure Improvements and/or Storm Water Facilities that exceed said previous Constructing Owner's PMIP obligation. This reimbursement shall be made by the Owner(s) through the payment of the PMIP on a per Unit basis as and when building permits for Units are requested by an Owner as a surcharge to the TASP Fee. In the event that any of the Owners have not requested all building permits for the Units allocated to their Parcels within seven (7) years after the Initial Completion Date, then the City may levy assessments or collect Mello-Roos special taxes from Unpaid Units for their share of the Shared Infrastructure Improvements and Storm Water Facilities costs for which the City has previously issued Shared Infrastructure TASP Fee Credit to a Constructing Owner pursuant to Section 3.2.3 as set forth in Section 3.2.7. Except as provided in Section 2.2.8.1, under no circumstances shall such assessments be levied against a Paid Unit.

3.2.7. Assessments/Mello-Roos Special taxes. Assessments or special taxes authorized pursuant to Section 3.2.6 shall be collected by means of financing provided by either

the California Communities Joint Power Authority Statewide Community Infrastructure Program (“SCIP”) or a Mello-Roos District or Community Facilities District (“CFD”). A single SCIP or CFD shall be established for all of the Parcels (with such separate taxing categories for each Owner’s Parcel as may be necessary). To provide a security for payment of each Owner’s PMIP obligations to the City and their agreements to pay the assessments and special taxes provided by and in accordance with Section 2.2.8.1 and Section 3.2.6, within three (3) months of the execution of the Agreement, each Owner shall request the City’s formation of the CFD and agree to the potential levy of special taxes, pursuant to the terms of this Agreement and the rate and method of apportionment documents for said CFD. For purposes of this Agreement, said CFD special taxes shall be used by the City solely to reimburse itself for the advancement of Shared Infrastructure TASP Fee Credits pursuant to Section 3.2.3 and administrative costs, and as allowed under Section 2.2.8.1. For purposes of this Agreement, the CFD shall not engage in the construction of any of the Shared Infrastructure Improvements or Storm Water Facilities. The Owners shall cooperate with the City in the proceedings necessary to establish the special tax, including consenting to and/or voting in favor of the special tax and other actions. The Owners shall not protest the formation of a Community Facilities District or the levying of any special taxes thereunder, pursuant to the terms of this Agreement. Any leases, agreements for sale or other documents transferring rights to part or all of the Owners’ properties, entered into after the date hereof, shall include provisions that assure that any right to consent, right to protest, or right to vote on the formation of a Community Facilities District or the levy or collection of a special tax held by the a tenant or a transferee shall be exercised in the same manner as is required of the Owner(s) in this Article 3. The Parties understand, acknowledge and agree that no assessments or special taxes shall be actually payable prior to seven (7) years after the Initial Completion Date, except possibly as set forth in Section 2.2.8.1 hereof.

3.2.7.1 After the formation of the CFD and consent to the potential collection of the special tax listed above in Section 3.2.7, the Owners may, no later than the end of the seventh year following the Initial Completion Date, request that the City seek SCIP financing in lieu of the CFD Bond financing method. In such case, the Owners shall request City satisfaction of SCIP participation requirements, including such things as adoption of a resolution making an election, and other SCIP requirements. The Owners shall also cause the submission of a financing application to SCIP. In the event that the SCIP application is reviewed and approved by SCIP administrators and all other requirements for SCIP financing, including the SCIP-mandated acquisition agreement for completed improvements, have been satisfied, the City may at its sole discretion then release the Owners from the CFD Bond financing obligation and instead permit the Owners to use SCIP financing to reimburse the City for its advancement of the Shared Infrastructure TASP Fee Credits, instead of CFD Bond financing, and its associated administrative costs.

3.2.7.2 Notwithstanding anything set forth in Section 3.2.7 above, in the event that (a) neither SCIP nor CFD financing is then available, or (b) if SCIP or CFD financing is available, but only at an interest rate greater than nine percent (9%), then, as an alternative to SCIP or CFD financing, the City and Owners agree that assessments shall be collected directly by the City from the Owners over a period of seven (7) years at a total annual rate not to exceed the greater of the following (the “Direct Assessment Method”): (i) \$717,857.00 (which is equal to the quotient of \$5,025,000 divided by 7); and (ii) the quotient of (x) the sum of Improvement

Costs previously paid plus the current Updated Cost Estimate to complete the Shared Infrastructure Improvements and Storm Water Facilities, divided by (y) seven (7).

3.2.8. Early Repayment. Once the collections of assessments or special taxes commence, the assessed or taxed Owners may at any time pay off their remaining respective obligation in a lump sum total (including financing and administrative costs), as determined by the City (in the context of CFD financing or the Direct Assessment Method), or the City and the California Communities Joint Powers Authority (in the event of SCIP financing) pursuant to provisions for such early payoff to be set forth in the CFD or SCIP documentation, which provisions shall be reasonably agreed upon by all of the Parties. Upon the satisfaction of said remaining obligation, as determined by the City or the California Communities Joint Powers Authority, the Owner's Parcel(s) shall be relieved of any further assessments in connection with the Shared Infrastructure Improvements and Storm Water Facilities costs.

## ARTICLE 4

### PUBLIC PARK IMPROVEMENTS

4.1. Subdistrict Public Park. The City has indicated that it would like the Public Park to be constructed in advance of full build-out of all of the residential Units within the Subdistrict. The Parties understand that in order to deliver the Public Park as desired by the City, the following tasks must be coordinated and completed: land dedication (by Citation and MS), design of park improvements, plan approval, and construction of park improvements. The Parties agree to coordinate their efforts to ensure that the Public Park is under construction within the timeline described in Section 4.6 below.

4.2. Park Dedication and Fee Credit. MS and Citation agree to offer to dedicate the land to the City as shown on their respective Tentative Subdivision Maps as the Public Park site. No land dedicated for the Public Park site shall be encumbered or made subject to a CFD (including, without limitation, any CFD to be formed pursuant to Section 3.2.7 above). The Parties acknowledge that said Public Park site dedication may be required prior to approval or recordation of final subdivision maps, in which case the land may be transferred to the City via legal description. In exchange for dedicating such land, MS and Citation shall each receive a fee credit from the City against their respective TASP Fee obligations, pursuant to Section 5(B)(2) of City of Milpitas Resolution No. 7778 (September 2, 2008), as amended, for each square foot of the Public Park site that is dedicated from the MS Parcels (as to MS) and the Citation Parcel (as to Citation). Such credit shall be referred to herein as the "Park Land Fee Credit". SI shall not receive any such dedication credit.

4.3. Park Design. The Parties agree that the City Council approval of the Tentative Maps shall constitute and demonstrate a legislative finding that the size and location of the proposed Public Park is consistent with the Specific Plan. However, the Parties understand, acknowledge and agree that the City's current intent for the design of the improvements for the Public Park varies from those improvements shown on the Tentative Maps, and is subject to further amendment and final approval by the City Council. The Parties agree to work together in good faith to design the physical improvements to the Public Park in a manner that satisfies the City's desire to provide recreational space and other amenities for use by future residents within the Subdistrict, as well as existing residents from the surrounding community, and such agreed

upon and approved improvements shall be referred to herein as the “Public Park Improvements”. The Parties shall also cooperate in an effort to craft a construction phasing plan for the construction of the Public Park Improvements that is acceptable to all Parties.

4.4. Design Approval and Construction Management. Subject to Section 2.2 above, the Parties agree that the initial Constructing Owner shall be the lead Party with respect to the design and construction of the Public Park Improvements and shall be entitled to receive a reasonable industry standard amount for overhead and profit. The initial Constructing Owner shall be responsible for hiring all necessary consultants (civil engineer, landscape architect, etc.) and managing the design and approval process with the City. The non-constructing Owners shall have the right to review and reasonably comment on all plans and documents prior to the initial Constructing Owner submitting plans for the Public Park Improvements to the City.

4.5. Park Improvement Reimbursement. The City acknowledges and agrees that all costs associated with the design and construction of the Public Park Improvements (“Park Improvement Costs”) shall be subject to a full credit against the Constructing Owner’s TASP Fee obligations (including a reasonable industry standard amount for overhead and profit) (the “Park Construction Fee Credit”). The Park Construction Fee Credit shall initially be calculated using an estimate for the costs of the design and construction of the Public Park Improvements, as mutually agreed upon by the City Engineer and the Constructing Owner. Following the completion of the construction of the Public Park Improvements in substantial conformance with the plans therefor, the Constructing Owner shall provide final invoices, records, change order documents, payment invoices and other necessary documents, as requested by the City, in order to provide to the City a final accounting of actual project costs to determine the Park Construction Fee Credit. The City shall thereafter have sixty (60) days in which to review and approve such items, which approval shall not be unreasonably withheld, conditioned or delayed. If the City does not approve all such items, the Park Construction Fee Credit shall be the amount approved by the City, and, if the Constructing Owner disputes the disapproval of such items by the City, the dispute shall be settled by arbitration pursuant to Article 10 hereof.

4.6. Construction Timeline. In order to ensure timely delivery of the Public Park Improvements, the Owners shall ensure that commencement of construction of Public Park Improvements is underway before any one Owner has achieved the thresholds set forth below. Specifically, the Public Park Improvements must be under construction prior to or concurrent with the occurrence of any one of the following:

- 4.6.1. Issuance of the 280<sup>th</sup> building permit for the Citation Parcel; or
- 4.6.2. Issuance of the 134<sup>th</sup> building permit for the MS Parcels; or
- 4.6.3. Issuance of the 193<sup>rd</sup> building permit for the SI Parcels; or
- 4.6.4. The cumulative issuance of 300 building permits for all of the Parcels.

It is the joint responsibility of all Owners to ensure the Public Park Improvements are designed and approved in order to enable commencement of construction prior to the above-referenced triggers. The City may refuse to issue building permits to any Owner if the Public

Park Improvements are not under construction as set forth herein, prior to the achievement of the milestones set forth above.

4.7. Cap on Park Improvement Costs. Notwithstanding anything set forth in this Article 4 above, the City agrees that no Constructing Owner of the Public Park Improvements shall be required to incur Park Improvement Costs which exceed the difference of the following (the "Park Cost Cap"): (a) the sum of PMIP and TASP Fee obligations attributable to all Units allocated to the Constructing Owner's Parcels, less (b) the sum of (i) all amounts expended by the Constructing Owner on Shared Infrastructure Improvements and Storm Water Facilities, (ii) any Park Land Fee Credit due to the Constructing Owner, and (iii) all amounts expended by such Constructing Owner on City Improvements pursuant to Section 12.14. The City understands, acknowledges and agrees that any Park Improvement Costs in excess of the Park Cost Cap shall not be collected from any additional assessments against Parcels in the Subdistrict. Notwithstanding anything in this Agreement or the Conditions of Approval to the contrary, a Constructing Owner's expenditure of funds on the Public Park Improvements in the amount of the Park Cost Cap shall be deemed to constitute compliance with Section 4.6 and the Constructing Owner's obligations with respect to its Public Park under this Agreement, its Conditions of Approval and its Tentative Map.

## **ARTICLE 5**

### **REIMBURSEMENT OF CITY ADMINISTRATIVE COSTS**

The Owners acknowledge that the administration of this Agreement constitutes an extraordinary cost to the City. Accordingly, the Owners shall pay for all of the following costs and expenses of the City to administer this Agreement and the procedures set up hereunder and incurred on or after the date hereof: (i) the reasonable attorney's fees attributable to the Office of the Milpitas City Attorney (the "City's Internal Costs"); and (ii) reasonable fees of third-party attorneys, consultants, and other specialists as the City may require, in its reasonable discretion (the "City's External Costs" and, together with the City's Internal Costs, the "City's Administrative Costs"). The City's Administrative Costs shall be allocated among the Owners pursuant to Section 3.2.2.1 above (and each Owner shall be solely responsible for the timely payment of its pro-rata portion of the City's Internal Costs and the City's External Costs in accordance with the provisions of this Article 5). The City's Internal Costs shall be billed to each Owner individually as a part of the Owner's Private Job Account in connection with the Owner's project in the Subdistrict. The invoices for the City's External Costs shall be paid by the Owners directly to the third-party attorneys, consultants, and other specialists retained by the City. Payment by an Owner of the City's Administrative Costs attributable to it shall be a condition precedent to the issuance of any building permit, legislative body approval, grant of entitlement, certificate of occupancy, or other City approval for such Owner's project. An Owner shall be entitled to pay amounts pursuant to the Article 5 under protest. The City shall work in good faith with Owners to limit costs. To help achieve reasonable cost controls, the City, upon an Owner's request, may provide periodic or milestone-based invoices and other cost tracking and administrative expense limiting measures consistent with City practices.

## ARTICLE 6

### IMPROVEMENT COST AND PUBLIC IMPROVEMENT COST REIMBURSEMENTS

6.1. Scope of City Obligation. The Owners acknowledge that the City shall only be obligated to provide such credits for the Shared Infrastructure Improvements, the Storm Water Facilities pursuant to the terms and procedure stated herein and, with respect to the Shared Infrastructure Improvements and the Storm Water Facilities, as expressed in the example worksheet attached as Exhibit H.

6.2. Overview. In broad terms, the procedure for the City to allocate credits and make cash payments shall be as follows. The Owners shall be subject to the PMIP obligations described in Article 3 and TASP Fee obligations, both of which shall be payable with respect to each Unit upon the issuance of a building permit for the Unit. The City shall provide each Owner with credits against its PMIP obligations as described in Article 3. In addition, and notwithstanding anything set forth in this Agreement to the contrary, the City shall provide each Owner with credits against its TASP Fee obligations in the following order, and regardless of when in time such credits are earned: (a) first, in the amount of its Shared Infrastructure TASP Fee Credit in accordance with Article 3; (b) second, in the amount of its Park Construction Fee Credit; and (c) lastly, in the amount of its Park Land Fee Credit.

6.3. No City Payment for Construction Fee Credits. An Owner's Shared Infrastructure TASP Fee Credit shall be determined as described in Article 3. If an Owner's Shared Infrastructure TASP Fee Credit shall exceed its aggregate TASP Fee obligations, under no circumstances shall such Owner be entitled to a cash payment for such excess; provided, however, that such Owner shall be entitled to a credit against other development fees as permitted by state or local law.

## ARTICLE 7

### GRANT OF RIGHT TO ENTER

7.1. Grant. The non-constructing Owners hereby grant to the Constructing Owner, its employees, agents, representatives, subcontractors and contractors, the right to enter upon the non-constructing Owners' Parcel(s) for purposes related to the construction of a Phase or Phases of the Shared Infrastructure Improvements and/or Storm Water Facilities and/or the Public Park Improvements in question pursuant to the terms of this Agreement. Within ten (10) days after receipt of a written request from the Constructing Owner (which includes copies of the documents requested to be executed), each non-constructing Owner agrees to execute any additional documents reasonably required by the City or other governmental agency, the Constructing Owner, a utility company, title company or lender, to evidence the grant of this right of entry, including, but not necessarily limited to, reasonable permission to grade and right of entry agreements. The City shall grant to each Constructing Owner, its employees, agents, representatives, subcontractors and contractors, the right to enter upon all portions of any of the Parcels previously dedicated to the City (and to Piper Drive and Milpitas Boulevard, as applicable) for purposes related to the construction of a Phase or Phases of the Shared Infrastructure Improvements and/or Storm Water Facilities and/or the Public Park Improvements

in question pursuant to this Agreement and City's standard right of entry procedures and requirements.

7.2. Entry Terms and Conditions. Without limiting the indemnity provisions hereof, the Owners acknowledge that construction of the Phase(s) of the Shared Infrastructure Improvements and/or Storm Water Facilities in question may temporarily interfere with each Owner's use and development of their respective Parcels and buildings and improvements located thereon. In exercising its rights hereunder, Constructing Owner agrees to use commercially reasonable efforts to refrain from engaging in activities that will unreasonably interfere with the non-constructing Owners' use or development of their Parcel(s). In no event shall the Constructing Owner's activities require the demolition of or abandonment of existing improvements (other than possibly driveway and parking areas not deemed necessary to continuing operations on the Parcel impacted in the reasonable discretion of the non-constructing Owner) or otherwise violate any rights of existing tenants of any non-constructing Owner. Each Owner agrees that any new lease that it enters into, or any extension of any existing lease, shall provide that the tenant is subject to potential temporary interference during a period of construction (not to include denial of access).

7.3. Insurance. Prior to entry onto the property of a non-constructing Owner, a Constructing Owner shall obtain, and cause to be maintained throughout the construction period until completion and expiration of any maintenance period (as defined below), comprehensive general liability and property damage insurance, written on an occurrence basis, insuring against personal injury, death or property damage in the amount of at least Two Million Dollars (\$2,000,000) per occurrence, including non-owned automobile coverage. The Constructing Owner shall be the named insured and the non-constructing Owners and the City, and then mortgagees, if any, shall be named additional insureds under such policy. Such policy shall provide that coverage of the non-constructing Owners and the City as additional insureds shall be primary and that any insurance maintained by the non-constructing Owners and the City shall be excess only. Evidence of such insurance shall be delivered to each non-constructing Owner and the City prior to any entry onto the non-constructing Owner's Parcel(s).

7.4. Indemnity. Each Constructing Owner hereby agrees to and does hereby, protect, indemnify defend and hold the non-constructing Owners and their Parcel(s) and the City, which includes the non-constructing Owners' and the City's officers, shareholders, partners, members, agents and employees, and their respective employees, officers, directors, agents, tenants, members, representatives, invitees, successors and assigns (the "Indemnified Parties"), harmless from and against any and all losses, costs, expenses, damages, causes of action, and injury to person or property, including mechanics' liens (collectively the "Claims"), arising or resulting from the construction of the Phase of the Shared Infrastructure Improvements and/or Storm Water Facilities and/or Public Park Improvements in question or any entry on the non-constructing Owners' or the City's Parcel(s) by the Constructing Owner, or its employees, agents, representatives, contractors and/or subcontractors, provided that the Constructing Owner shall have no responsibility or liability to protect, indemnify, defend and hold the non-constructing Owners, the City, and Indemnified Parties harmless from any Claims arising from the negligence or misconduct of the non-constructing Owners or Indemnified Parties.

7.5. Duration. The Constructing Owner's right of entry, except for those permanent easements and dedications entered into between the Owners pursuant to Article 1 above, shall expire upon Completion of the Phase of the Shared Infrastructure Improvements and/or Storm Water Facilities and/or Public Park Improvements in question and the expiration of any maintenance or warranty periods with respect to the Phase of the Shared Infrastructure Improvements and/or Storm Water Facilities and/or Public Park Improvements in question imposed by the City or any other governmental agency. Upon the request of the non-constructing Owners or the City following the expiration of the right of entry, the non-constructing Owners and the Constructing Owner shall cooperate reasonably to prepare and record documents terminating and releasing the grant of entry rights set forth in this Article 7 and any supplemental documents further granting or implementing such rights.

7.6. Storm Water Facilities. Citation agrees to provide land to accommodate the project-wide Media Filter in the approximate location shown on Exhibit I, Sheet 1, at no cost to the other Parties. The Parties acknowledge that the precise location of the project-wide Media Filter may change depending on site conditions, regulatory constraints, and other unforeseen circumstances, including, but not limited to the actions of public agencies and other entities that are not party to this Agreement. In the event such circumstances preclude Citation from providing land as described herein, the Parties shall cooperate in efforts to identify a suitable alternative location within the Subdistrict. In the event that Citation is not the Constructing Owner for purposes of constructing the project-wide Media Filter, Citation grants the Constructing Owner of the project-wide Media Filter the easements and dedications provided in Article 1 above and the access rights set forth in Section 7.1 above, subject to the terms and conditions set forth in Article 1 and Article 7 above, as applicable. After the construction of the project-wide Media Filter and the other Storm Water Facilities, the Parties agree to enter into a separate cost sharing agreement for the ongoing maintenance and repair of the Media Filter and other Storm Water Facilities, which cost sharing agreement shall allocate such maintenance and repair obligations among the Owners in accordance with the allocations set forth in Section 3.2.2.2.

## ARTICLE 8

### SPECIFIC INDEMNIFICATION OF CITY

8.1. Owner Indemnification of City. Each Owner agrees to and shall indemnify, hold harmless and defend City and its officers, officials, members, agents, consultants, attorneys, employees, and representatives (collectively, the "Indemnified City Parties") from and against (A) any claims, disputes, damages, losses, expenses, consultant fees, specialist fees or attorneys' fees arising out of this Agreement or out of the performance of this Agreement in connection with a claim made by a third party (i.e., excluding claims made by another Owner) and (B) liability or claims for death or personal injury and liability and claims for breach of contract and property damage which may arise from the acts, errors and/or omissions of said Owner or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project or this Agreement (the "Indemnified Claims"). The foregoing indemnity applies to all deaths, injuries and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors and/or omissions referred to in this paragraph, regardless of whether or not City prepared, supplied or approved agreements, plans or specifications, or both, and

regardless of whether or not insurance policies are applicable. Notwithstanding the foregoing, the Owner in question shall have no indemnity obligation under this Article 8 if such claim or loss is due in whole or in part to the negligence or willful misconduct of the Indemnified City Parties.

In indemnifying the City pursuant to Section 7.4 or Section 8.1, the indemnifying Owner(s) shall have the obligation to provide the defense of City in the litigation, either by providing legal counsel or, at City's option, timely paying the legal costs incurred by City in the defense of litigation with counsel chosen by City and reasonably acceptable to the Owner. City shall, at no cost to City, cooperate with the indemnifying Owner(s) in any such defense as the indemnifying Owner(s) may reasonably request. Furthermore, the City shall not settle or resolve any such claim without the prior written consent of the indemnifying Owner(s), said consent not to be unreasonably withheld. In the event of a court action, dispute, or proceeding, and no Owner provides a defense, (i) City shall have the right, but not the obligation, either to defend or not to defend such action, dispute or proceeding, and to resolve such action, dispute or proceeding in any manner it chooses in its sole discretion, including terminating this Agreement; (ii) in the event of such termination, Owners, upon written request of City, shall immediately execute a termination document or other document reasonably required by a reputable title company to remove this Agreement as a cloud on title; and (iii) the City may settle or resolve any such claim without the consent of the Owner(s).

## **ARTICLE 9**

### **DEFAULT**

9.1. Default. A default under this Agreement will exist in the event: (i) an Owner fails to make any monetary payment when due hereunder, and such default is not cured within ten (10) days after receipt of written notice of default from the Owner to whom the payment is due (which notice describes the unpaid amount and the basis for it); or (ii) an Owner fails to perform any other obligation of such Owner hereunder and such default is not cured within thirty (30) days after receipt of written notice from a non-defaulting Owner or the City, provided that if the default reasonably requires additional time to complete the cure, such 30-day period shall be extended for the time reasonably required so long as the defaulting Owner commences the cure within such 30-day period and diligently prosecutes the cure to completion thereafter.

## **ARTICLE 10**

### **ARBITRATION**

10.1. Arbitration of Disputes. Any dispute between the Owners arising out of the interpretation or performance of this Agreement shall be resolved pursuant to this Section 10.1. As to disputes between the City and any Owner(s) in connection with Park Improvement Reimbursement pursuant to Section 4.5 hereof shall be resolved pursuant to this Section 10.1. The City may in its sole discretion opt to use or allow an Owner(s)' use of the arbitration provisions set forth in this Article 10 in connection with other disputes between the City and an Owner(s). As to the City, the arbitration rights provided for herein shall be in addition to any other rights available to it under law and this Agreement. In the event of City exercise or

allowance of the use of the arbitration procedures provided in this Article 10, City shall be entitled to all rights provided to an “Owner” as provided herein.

10.1.1. Voluntary Settlement. At any time after a dispute has arisen, any of the Owners may deliver written notice to any other Owner describing the dispute in reasonable detail and invoking the voluntary settlement procedures of this Section 10.1.1. The Owners shall meet and negotiate in good faith in an effort to resolve the dispute by mutual agreement for a period of thirty (30) days after receipt of such notice, as such period may be extended by mutual agreement of the Owners.

10.1.2. Binding Arbitration. If the Owners are unable to resolve the dispute by voluntary settlement within the period described in Section 10.1.1, the dispute shall be resolved by binding arbitration instituted by any Owner by delivering a written demand for arbitration to the other Owner(s).

10.1.3. Governing Rules. Arbitration shall be conducted in Santa Clara County, California in accordance with California Code of Civil Procedure Sections 1280-1284.2, as amended as of the date of submission of the dispute (“Rules”), and as modified by this Section. To the extent there is a conflict between the provisions of this Section and the Rules, however, the provisions of this Section shall govern. By mutual written agreement, the Owners involved in the dispute may vary any of the provisions of this Section and the Rules, including modifications which designate an alternative dispute resolution procedure. Owners shall be permitted to participate by videoconference or telephone conference.

10.1.4. Selection of Arbitrator. As used herein, a “qualified arbitrator” means a retired judge or a licensed attorney with at least twenty (20) years’ experience in resolving disputes in the San Jose area. Within ten (10) days after one of the Owners delivers a written demand for arbitration to another Owner, the Owners shall meet and attempt to select, by mutual agreement, one (1) qualified arbitrator to act as the sole arbitrator of the dispute. If the parties to the dispute cannot agree on an arbitrator within such 10-day period, as such period may be extended by mutual agreement of the parties to the dispute, then, within an additional ten (10) days, each Owner shall designate up to three (3) qualified arbitrators and notify the other Owner in writing of the designations. The qualified arbitrators so designated within such 10-day period shall constitute the “List of Arbitrators.” If an Owner fails to designate any qualified arbitrators within such 10-day period, then the qualified arbitrators designated by the other parties to the dispute shall constitute the List of Arbitrators. Within ten (10) days after the List of Arbitrators has been constituted, the parties to the dispute shall meet and negotiate in good faith to select one (1) arbitrator from the List of Arbitrators to act as the sole arbitrator of the dispute. If the Owners fail to select an arbitrator within such 10-day period, such sole arbitrator shall be appointed from the List of Arbitrators by the Presiding Judge of the Superior Court of Santa Clara County, California upon written application of any Owner.

10.1.5. Discovery. Discovery for the arbitration proceedings shall be conducted in accordance with the Rules, except to the extent otherwise provided in this Section. The Owners desire to provide for the expeditious resolution of disputes. Therefore, notwithstanding anything to the contrary set forth in the Rules, discovery conducted under the arbitration shall be limited as follows: (i) within twenty (20) days after selection of the arbitrator, the Owners shall

meet at a mutually-agreeable place and conduct a mutual exchange of documents relating to the dispute; and (ii) at such meeting, the arbitrator shall have the right to order the production of any additional documents from any Owner and to specify the nature and extent of other discovery which the arbitrator determines is reasonably required, including, but not limited to, the taking of depositions or the obtaining of expert reports. If the arbitrator determines that expert witnesses are required, each Owner shall be entitled to designate such an expert and the arbitrator may designate a third expert, as the arbitrator deems appropriate. The arbitrator shall have authority to set further discovery deadlines in order to facilitate the efficient conduct of the arbitration.

10.1.6. Proceedings. A hearing shall be conducted by the arbitrator within sixty (60) days after selection of the arbitrator, unless the arbitrator determines that additional time is reasonably required. The Owners shall submit such legal briefing or other statements of position as the arbitrator may request.

10.1.7. Findings; Conclusions; Decision. Within thirty (30) days after completion of the hearing, the arbitrator shall reach a written decision regarding the dispute and deliver the same to the Owners. Upon the request of any of the Owners, the arbitrator shall issue a written opinion of findings of fact and conclusions of law. The decision of the arbitrator shall become final ten (10) days after it is delivered to the Owners and shall be binding on the Owners, conclusive and nonappealable.

10.1.8. Powers of Arbitrator. The arbitrator shall have the power and jurisdiction to resolve all disputes and order all remedies available under applicable law or equity, consistent with the provisions of this Agreement, including, without limitation, ordering specific performance and attorneys' fees and costs to the Party the arbitrator determines is the prevailing Party; provided, however, that the arbitrator shall not have the power to award punitive damages. The arbitrator shall resolve the dispute in accordance with applicable substantive laws of the State of California.

10.1.9. Fees and Costs. The parties to the dispute shall share equally the arbitrator's fees and costs, but each Owner shall bear its own attorneys' fees and other costs related to the presentation of its case, unless the arbitrator makes an award of attorneys' fees to one or more of the Owners.

10.1.10. Enforcement. Judgment upon the arbitration award may be entered in, confirmed and enforced by the Superior Court of the County of Santa Clara, California.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED

TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS TO NEUTRAL ARBITRATION.

Initials:  \_\_\_\_\_

Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

## ARTICLE 11

### TERMINATION

11.1. Term. In addition to the termination provisions provided elsewhere herein, this Agreement shall automatically terminate, without the need of instructions from the Owners, upon the last to occur of: (i) the Completion of all of the Shared Infrastructure Improvements and/or Storm Water Facilities; (ii) the expiration of any maintenance or warranty periods with respect to the Shared Infrastructure Improvements and/or Storm Water Facilities imposed by the City or any other governmental agency; (iii) the reimbursement by Owners of the Improvement Costs in accordance with Article 3 hereof; and (iv) the reimbursement of the City of any outstanding amounts owed to it via direct payment by an Owner or CFD Bond or SCIP financing, in the event of non-payment or non-performance of the non-constructing Owners pursuant to Section 3.2.7. Within fifteen (15) days of request by an Owner after termination of this Agreement, as otherwise set forth herein, the other Owners shall execute and have notarized all documents reasonably necessary to remove this Agreement as an exception to title to the Owner's Parcel(s). This Agreement can also be terminated upon the written consent of all Owners prior to the commencement of and development by any Owner if no construction has been commenced within ten (10) years of the execution of this Agreement. If this Agreement is terminated pursuant to the preceding sentence, each Owner shall have the right to unilaterally terminate the CFD established for its Parcel(s) pursuant to Section 3.2.7 above.

11.2. Release of Units. As and when a building permit is pulled for a Unit and the PMIP and TASP Fee paid (or credited pursuant to this Agreement) for the Unit in question (the "Paid Unit"), the Paid Unit shall be released of any obligations pursuant to this Agreement. The Parties hereby authorized and agree that the City shall cause to be recorded a document releasing each Paid Unit from any obligations pursuant to this Agreement. In addition, each Party agrees at no cost or charge to the requesting Party to execute, have notarized and deliver any document reasonably requested by another Party or a title insurance company to document the fact that a Paid Unit has been released of any obligations pursuant to this Agreement.

## ARTICLE 12

### OTHER PROVISIONS

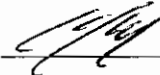
12.1. Amendment. This Agreement may be amended or terminated by a written instrument executed and acknowledged by each of the Owners and the City.

TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS TO NEUTRAL ARBITRATION.

Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

Initials: 

## ARTICLE II

### TERMINATION

11.1. Term. In addition to the termination provisions provided elsewhere herein, this Agreement shall automatically terminate, without the need of instructions from the Owners, upon the last to occur of: (i) the Completion of all of the Shared Infrastructure Improvements and/or Storm Water Facilities; (ii) the expiration of any maintenance or warranty periods with respect to the Shared Infrastructure Improvements and/or Storm Water Facilities imposed by the City or any other governmental agency; (iii) the reimbursement by Owners of the Improvement Costs in accordance with Article 3 hereof; and (iv) the reimbursement of the City of any outstanding amounts owed to it via direct payment by an Owner or CFD Bond or SCIP financing, in the event of non-payment or non-performance of the non-constructing Owners pursuant to Section 3.2.7. Within fifteen (15) days of request by an Owner after termination of this Agreement, as otherwise set forth herein, the other Owners shall execute and have notarized all documents reasonably necessary to remove this Agreement as an exception to title to the Owner's Parcel(s). This Agreement can also be terminated upon the written consent of all Owners prior to the commencement of and development by any Owner if no construction has been commenced within ten (10) years of the execution of this Agreement. If this Agreement is terminated pursuant to the preceding sentence, each Owner shall have the right to unilaterally terminate the CFD established for its Parcel(s) pursuant to Section 3.2.7 above.

11.2. Release of Units. As and when a building permit is pulled for a Unit and the PMIP and TASP Fee paid (or credited pursuant to this Agreement) for the Unit in question (the "Paid Unit"), the Paid Unit shall be released of any obligations pursuant to this Agreement. The Parties hereby authorized and agree that the City shall cause to be recorded a document releasing each Paid Unit from any obligations pursuant to this Agreement. In addition, each Party agrees at no cost or charge to the requesting Party to execute, have notarized and deliver any document reasonably requested by another Party or a title insurance company to document the fact that a Paid Unit has been released of any obligations pursuant to this Agreement.

## ARTICLE 12

### OTHER PROVISIONS

12.1. Amendment. This Agreement may be amended or terminated by a written instrument executed and acknowledged by each of the Owners and the City.

TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS TO NEUTRAL ARBITRATION.

Initials: 

Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

## ARTICLE 11

### TERMINATION

11.1. Term. In addition to the termination provisions provided elsewhere herein, this Agreement shall automatically terminate, without the need of instructions from the Owners, upon the last to occur of: (i) the Completion of all of the Shared Infrastructure Improvements and/or Storm Water Facilities; (ii) the expiration of any maintenance or warranty periods with respect to the Shared Infrastructure Improvements and/or Storm Water Facilities imposed by the City or any other governmental agency; (iii) the reimbursement by Owners of the Improvement Costs in accordance with Article 3 hereof; and (iv) the reimbursement of the City of any outstanding amounts owed to it via direct payment by an Owner or CFD Bond or SCIP financing, in the event of non-payment or non-performance of the non-constructing Owners pursuant to Section 3.2.7. Within fifteen (15) days of request by an Owner after termination of this Agreement, as otherwise set forth herein, the other Owners shall execute and have notarized all documents reasonably necessary to remove this Agreement as an exception to title to the Owner's Parcel(s). This Agreement can also be terminated upon the written consent of all Owners prior to the commencement of and development by any Owner if no construction has been commenced within ten (10) years of the execution of this Agreement. If this Agreement is terminated pursuant to the preceding sentence, each Owner shall have the right to unilaterally terminate the CFD established for its Parcel(s) pursuant to Section 3.2.7 above.

11.2. Release of Units. As and when a building permit is pulled for a Unit and the PMIP and TASP Fee paid (or credited pursuant to this Agreement) for the Unit in question (the "Paid Unit"), the Paid Unit shall be released of any obligations pursuant to this Agreement. The Parties hereby authorized and agree that the City shall cause to be recorded a document releasing each Paid Unit from any obligations pursuant to this Agreement. In addition, each Party agrees at no cost or charge to the requesting Party to execute, have notarized and deliver any document reasonably requested by another Party or a title insurance company to document the fact that a Paid Unit has been released of any obligations pursuant to this Agreement.

## ARTICLE 12

### OTHER PROVISIONS

12.1. Amendment. This Agreement may be amended or terminated by a written instrument executed and acknowledged by each of the Owners and the City.

12.2. Approvals. All approvals and consents requested or required pursuant to this Agreement shall not be unreasonably withheld, conditioned or delayed.

12.3. Binding Effect. The provisions of this Agreement are intended to bind and benefit each of the Owners and each successor Owner of the Owners' Parcels. The Owners intend that this Agreement comply with California Civil Code Section 1468 as a covenant running with the land.

12.4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one agreement after each of the Owners has executed such a counterpart.

12.5. Force Majeure. If any Owner is delayed in or prevented from performing any act required hereunder by reason of strikes, lock-outs, labor problems, inability to procure materials, failure of power or other utilities, restrictive governmental laws or regulations, delays by governmental authorities in issuing required permits or approvals, prolonged rain or other unusual or unseasonable weather conditions, riots, insurrection, war or other reason of a like nature (excluding economic conditions or financial inability to perform other than those referenced in this Agreement), not the fault of the Party so affected ("Force Majeure"), then performance of such act shall be excused to the extent necessary as a result of such event.

12.6. Notice. Any notice to be given or other document or any payment to be delivered by any Party to the other or others hereunder, may be delivered in person to a Party or an officer of any Party, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service marked for next business day delivery or by facsimile with confirmation delivered by U.S. Mail, as provided for herein. Any of the Parties may change its address for notice purposes by sending a notice to the other Parties in the manner described above.

To MS: MILPITAS STATION, LLC  
Attn: Randall Jenson  
12275 El Camino Real, Suite 110  
San Diego, CA 92130  
Telephone: (858) 523-0832  
Facsimile: (858) 523-1899  
E-mail: [rjenson@ranchcapital.com](mailto:rjenson@ranchcapital.com)

With a copy to: FOLEY & LARDNER LLP  
Attn: Richard L. Moskitis, Esq.  
402 West Broadway, Suite 2100  
San Diego, CA 92101  
Telephone: (619) 685-6439  
Facsimile: (619) 234-3510  
E-Mail: [rmoskitis@foley.com](mailto:rmoskitis@foley.com)

To SI: SOUTHSIDE INDUSTRIAL PARK  
c/o Green Valley Corporation

Attn: Jeff Major  
777 North 1st Street, 5th Floor  
San Jose, CA 95112  
Telephone: (408) 938-6356  
Facsimile: (408) 998-1737  
E-Mail: [jmajor@barryswensonbuilder.com](mailto:jmajor@barryswensonbuilder.com)

With a copy to:

WILLIAM A. VAN ROO, ESQ.  
13863 Quarterhorse Drive  
Grass Valley, CA 95949  
Telephone: (530) 268-8498  
Facsimile: (408) 294-5453  
E-Mail: [vanroolaw@aol.com](mailto:vanroolaw@aol.com)

To Citation:

SCS DEVELOPMENT CO.  
Attn: Charles McKeag  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050  
Telephone: (408)-985-6071  
Facsimile: \_\_\_\_\_  
E-Mail: [charlesm@scsdevelopment.com](mailto:charlesm@scsdevelopment.com)

To City:

CITY OF MILPITAS  
Attn: City Manager  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Telephone: (408) 586-3050  
Facsimile: (408) 586-3056  
E-Mail: [twilliams@ci.milpitas.ca.gov](mailto:twilliams@ci.milpitas.ca.gov)

With a copy to:

OFFICE OF THE MILPITAS CITY ATTORNEY.  
Attn: Bryan M. Otake, Assistant City Attorney  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Telephone: (408) 586 3040  
Facsimile: (408) 586-3056  
E-Mail: [botake@ci.milpitas.ca.gov](mailto:botake@ci.milpitas.ca.gov)

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by overnight delivery service as hereinabove provided shall be deemed given on the date of deposit with the overnight delivery service; and those given by facsimile shall be deemed given on the date of facsimile transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be

deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, or on the first calendar day after deposit with commercial courier, as the case may be.

12.7. Waiver. No waiver by one Party of a breach of any of the terms, covenants or conditions of this Agreement by another Party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by one Party hereunder shall be implied from any omission by another Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by one Party to or of any act by another Party requiring the consent or approval of the first Party shall not be deemed to waive or render unnecessary such Party's consent or approval to or of any subsequent similar acts by the other Party.

12.8. Severability. In the event that any phrase, clause, sentence, paragraph, Section, article or other portion of this Agreement shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law and to the extent that the purposes of this Agreement can still be met.

12.9. Cooperation. The Owners acknowledge that it may be necessary to execute additional documents other than those specifically referred to herein in order to construct the Shared Infrastructure Improvements and/or Storm Water Facilities and obtain reimbursement for the same, including, but not limited to, any documents required by the City for the dedication of all or a portion of the Shared Infrastructure Improvements and/or Storm Water Facilities, letters of permission to grade required by the City, temporary construction easements, slope easements and right of entry agreements. The Owners hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary in accordance with the intent of the parties as evidenced by this Agreement, provided such documents do not create any additional material liability or expense for such Party not contemplated by this Agreement.

12.10. Mortgagee Subordination. Each Party agrees to secure from any beneficiary of a deed of trust or mortgagee pursuant to a mortgage encumbering its parcels, a consent to this Agreement and recordable subordination of such deed of trust or mortgage to this Agreement.

12.11. Effective Date. This Agreement shall be effective upon execution of this Agreement by the Parties.

12.12. Recitals. The Recitals set forth above are incorporated herein by this reference.

12.13. Satisfaction of Conditions of Approval. City, Citation and MS understand, acknowledge and agree that the bonding and completion of the Shared Infrastructure Improvements and Storm Water Facilities in Phases as set forth in this Agreement, and the payment of the PMIP and TASP Fee obligations set forth in this Agreement, shall satisfy (i) all of the following MS Public Improvement Conditions: Nos. 1 (as to common storm drain issues), 7, 9 and 11 (regarding payment of fees), and 5, 8, 25 and 26 (regarding improvements), it being

expressly understood by the Parties that any requirements of the MS Public Improvements Conditions not included in the Shared Infrastructure Improvements and/or Storm Water Facilities (as defined in this Agreement), including, but not limited to, the railroad crossing improvements referenced in Condition of Approval No. 8, are waived, deleted or revised as conditions of the MS Tentative Map and that compliance with the requirements of this Agreement shall be deemed to constitute complete compliance with said conditions and have been found by the City and the City Engineer to be in substantial conformity with the MS Public Improvement Conditions, and (ii) all of the following Citation Public Improvement Conditions: Nos. 2 (as to common storm drain issues), 11 and 16 (regarding payment of fees), and 17, 18, 19 and 20 (regarding improvements), it being expressly understood by the Parties that any requirements of the Citation Public Improvements Conditions not included in the Shared Infrastructure Improvements and/or Storm Water Facilities (as defined in this Agreement), are waived, deleted or revised as conditions of the Citation Tentative Map and that compliance with the requirements of this Agreement shall be deemed to constitute complete compliance with said conditions, and have been found by the City and the City Engineer to be in substantial conformity with the Citation Public Improvement Conditions. City agrees that it will not require any Owner in the Subdistrict to pay for or satisfy any of the Conditions of Approval waived, deleted or revised as set forth above in this Section 12.13 other than as set forth in this Agreement.

12.14. City Improvements. The City Improvements shall be constructed at such time as the Street A intersection improvements, including signalization with Milpitas Blvd., are constructed. (The Parties understand that the City is not requiring a railway crossing arm assembly as part of the City Improvements.) If the Phase of Shared Infrastructure Improvements also includes construction of the City Improvements, the Constructing Owner shall also construct and complete the City Improvements, but all Improvement Costs (including Management Fee) in connection with the City Improvements shall be excluded from reimbursement pursuant to Article 3 hereof and the Constructing Owner shall receive a credit for the amount of Improvement Costs in connection with the City Improvements against its TASP Fee obligations.

***Remainder of Page Intentionally Left Blank***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

MS:

MILPITAS STATION, LLC, a California limited liability company

By: 

Lawrence S. Hershfield, Manager

Date of Signature: 8-13-09

SI:

SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By: Green Valley Corporation, a California corporation, General Partner

By:

Its:

**SIGNED IN  
COUNTERPART**

Date of Signature: \_\_\_\_\_

CITATION:

SCS DEVELOPMENT CO., a California corporation

**SIGNED IN**

By:

Print Name:

Title:

**COUNTERPART**

Date of Signature: \_\_\_\_\_

CITY:

CITY OF MILPITAS

By:

Print Name:

Title:

**SIGNED IN**

**COUNTERPART**

Date of Signature: \_\_\_\_\_

*Signature Page to Cost Sharing Agreement*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

MS:

MILPITAS STATION, LLC, a California limited liability company

**SIGNED IN**

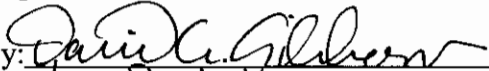
By: **COUNTERPART**  
Randall Jenson, Manager

Date of Signature: \_\_\_\_\_

SI:

SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By: Green Valley Corporation, a California corporation, General Partner

By:   
Its: Vice President

Date of Signature: \_\_\_\_\_

CITATION:

SCS DEVELOPMENT CO., a California corporation

**SIGNED IN**

By: **COUNTERPART**  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

CITY:

CITY OF MILPITAS

**SIGNED IN**

By: **COUNTERPART**  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*Signature Page to Cost Sharing Agreement*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

MS:

MILPITAS STATION, LLC, a California limited liability company

**SIGNED IN**

By:                       
Randall Jensen, Manager

Date of Signature:                     

SI:

SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By:                       
Green Valley Corporation, a California corporation, General Partner

By:                       
Its:                     

Date of Signature:                     

CITATION:

SCS DEVELOPMENT CO., a California corporation

By:                       
Print Name: CHARLES G. WICKREAG  
Title: VICE PRESIDENT, ACQUISITION & DEV'T.

Date of Signature:                     

CITY:

CITY OF MILPITAS

**SIGNED IN**

By:                       
Print Name:                       
Title:                     

Date of Signature:                     

***Signature Page to Cost Sharing Agreement***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

MS: MILPITAS STATION, LLC, a California limited liability company

By: \_\_\_\_\_  
Randall Jensen, Manager

Date of Signature: \_\_\_\_\_

**SIGNED IN  
COUNTERPART**

SI: SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By: Green Valley Corporation, a California corporation, General Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**SIGNED IN  
COUNTERPART**

CITATION: SCS DEVELOPMENT CO., a California corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**SIGNED IN  
COUNTERPART**

CITY: CITY OF MILPITAS

By: \_\_\_\_\_

Print Name: Thomas C. Williams

Title: City Manager

Date of Signature: 9/2/09

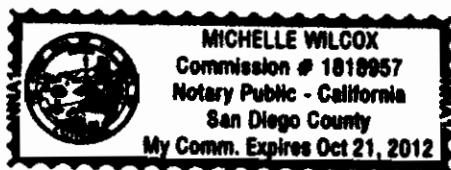
***Signature Page to Cost Sharing Agreement***

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF San Diego)

On August 13, 2009, before me, Michelle Wilcox, Notary Public, personally appeared Lawrence S. Hershfield who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Michelle Wilcox  
Notary Public

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF )

On \_\_\_\_\_, 200\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

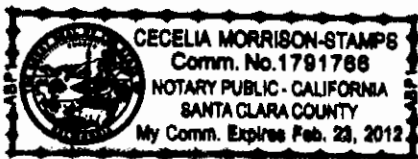
\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF Santa Clara

On 8/13/09, 2009, before me, Cecelia Morrison-Stamps, Notary Public, personally appeared David A. Gibbons, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Cecelia Morrison-Stamps  
Notary Public

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF )

On \_\_\_\_\_, 200\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF Santa Clara

On September 1, 2009, before me, Veronica R. Bejines, Notary Public, personally appeared Charles McKee, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Veronica R. Bejines  
Notary Public

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF )

On \_\_\_\_\_, 200\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public



**First American**

First American Title Insurance Company  
National Commercial Services  
1737 North First Street, Suite 500  
San Jose, CA 95112  
Phn - (408)451-7800  
Fax - (408)451-7836

ILLEGIBLE NOTARY CERTIFICATION AND SEAL DECLARATION  
(GOVERNMENT CODE 27341.7)

STATE OF CALIFORNIA            )  
  ) SS.  
COUNTY OF SANTA CLARA    )

NAME OF NOTARY: VERONICA R. BEJINES  
PLACE OF NOTARY'S OATH/BOND: SANTA CLARA COUNTY

COMMISSION I.D. NUMBER: 1856516

VENDOR I.D. NUMBER: *N/A*

COMMISSION EXPIRATION DATE: JULY 2, 2013

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
(CCP 2015.5)

PLACE OF EXECUTION OF THIS DECLARATION: SANTA CLARA COUNTY

DATE: *September 8, 2009*  
BY: *Carlene Cessell*

FOR FIRST AMERICAN TITLE INSURANCE COMPANY

State of California )  
County of Santa Clara )

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On 9-2-2009 before me, Mary A. Lavelle Notary Public  
(here insert name and title of the officer)

personally appeared Thomas C. Williams

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Mary A Lavelle

(Seal)

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

#### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Cost Share Agreement  
containing \_\_\_\_\_ pages, and dated \_\_\_\_\_

The signer(s) capacity or authority is/are as:

☐ Individual(s)  
☐ Attorney-in-Fact  
☒ Corporate Officer(s) City Manager  
Title(s)

☐ Guardian/Conservator  
☐ Partner Limited/General  
☐ Trustee(s)  
☐ Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

#### Additional Information

##### Method of Signer Identification

Proved to me on the basis of satisfactory evidence:  
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:  
Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

##### Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐

## EXHIBIT A

### LEGAL DESCRIPTION OF CURRENT SI PARCELS

#### PARCEL 1:

A PORTION OF THAT PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY AMERON, INC., BY THAT CORPORATION GRANT DEED RECORDED NOVEMBER 16, 1970 IN BOOK 9122 OF OFFICIAL RECORDS AT PAGE 195, TOGETHER WITH A PORTION OF THAT 1.26 FOOT WIDE STRIP OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY AMERON, INC., BY THAT CORPORATION GRANT DEED RECORDED FEBRUARY 14, 1974 IN BOOK 0762 OF OFFICIAL RECORDS AT PAGE 240, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF PARCEL 2 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD DECEMBER 28, 1971 IN BOOK 294 OF MAPS AT PAGE 35, SANTA CLARA COUNTY RECORDS, SAID CORNER BEING THE SOUTHEAST CORNER OF SAID 1.26 FOOT WIDE STRIP;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, SOUTH 78 DEG. 19' 00" WEST 992.48 FEET;

THENCE AT RIGHT ANGLES NORTH 11 DEG. 41' 00" WEST 170.00 FEET TO A LINE PARALLEL AND 170.00 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES, TO SAID SOUTHERLY LINE OF PARCEL 2;

THENCE ALONG SAID PARALLEL LINE NORTH 78 DEG. 19' 00" EAST 438.84 FEET;

THENCE AT RIGHT ANGLES SOUTH 11 DEG. 41' 00" EAST 120.00 FEET TO A LINE PARALLEL AND 50.00 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES, TO SAID SOUTHERLY LINE OF PARCEL 2;

THENCE ALONG SAID PARALLEL LINE, NORTH 78 DEG. 19' 00" EAST 552.83 FEET TO THE EASTERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID EASTERLY LINE, SOUTH 12 DEG. 36' 40" EAST 50.01 FEET TO SAID POINT OF BEGINNING.

AND BEING PARCEL TWO AS REFERENCED IN THAT CERTAIN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING LOT LINE ADJUSTMENT RECORDED FEBRUARY 5, 1999 AS INSTRUMENT NO. 14643238, OFFICIAL RECORDS.

APN: 086-32-038

PARCEL 2:

A PORTION OF THAT PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY AMERON, INC., BY THAT CORPORATION GRANT DEED RECORDED NOVEMBER 16, 1970 IN BOOK 9122 OF OFFICIAL RECORDS AT PAGE 195 BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD DECEMBER 28, 1971 IN BOOK 294 OF MAPS AT PAGE 35, SANTA CLARA COUNTY RECORDS, DISTANT THEREON NORTH 12 DEG. 36' 40" WEST 50.01 FEET FROM THE MOST EASTERLY CORNER OF SAID PARCEL 2;

THENCE ALONG A LINE PARALLEL AND 50.00 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES, TO SAID SOUTHERLY LINE OF PARCEL 2, SOUTH 78 DEG. 19' 00" WEST 552.83 FEET;

THENCE AT RIGHT ANGLES NORTH 11 DEG. 41' 00" WEST 170.16 FEET TO A LINE PARALLEL AND 40.00 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES, TO THE NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID PARALLEL LINE NORTH 78 DEG. 19' 00" EAST 339.04 FEET;

THENCE AT RIGHT ANGLES SOUTH 11 DEG. 41' 00" EAST 40.16 FEET;

THENCE PARALLEL TO SAID SOUTHERLY LINE OF PARCEL 2 NORTH 78 DEG. 19' 00" EAST 211.68 FEET TO A POINT ON SAID EASTERLY LINE OF PARCEL 2, SAID POINT BEING DISTANT ALONG SAID EASTERLY LINE NORTH 12 DEG. 36' 40" WEST 180.03 FEET FROM THE EASTERLY CORNER OF SAID PARCEL 2;

THENCE ALONG SAID EASTERLY LINE SOUTH 12 DEG. 36' 40" EAST 130.02 FEET TO SAID POINT OF BEGINNING.

AND BEING PARCEL THREE AS REFERENCED IN THAT CERTAIN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING LOT LINE ADJUSTMENT RECORDED FEBRUARY 5, 1999 AS INSTRUMENT NO. 14643238, OFFICIAL RECORDS.

APN: 086-32-039

**EXHIBIT B**

**LEGAL DESCRIPTION OF CURRENT CITATION PARCELS**

**[Please see attached.]**

PARCEL 4:

ALL THAT PORTION OF LAND DESIGNATED AND DELINEATED AS "PARCEL FOUR" UNDER RESOLUTION NO. 6842, OF THE CITY OF MILPITAS AUTHORIZING THE LOT LINE ADJUSTMENT PROJECT NO. 2163, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON FEBRUARY 5, 1999, UNDER RECORDER'S SERIES NO. 14643238, OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THAT PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY AMERON, INC. BY THAT CORPORATION GRANT DEED RECORDED NOVEMBER 16, 1970 IN BOOK 9122 OF OFFICIAL RECORDS AT PAGE 195 BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERLY CORNER OF PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD DECEMBER 28, 1971 IN BOOK 294 OF MAPS AT PAGE 35, SANTA CLARA COUNTY RECORDS;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 SOUTH 78° 19' 00" WEST 376.71 FEET TO THE SOUTHEASTERLY CORNER OF THAT 2.00 ACRE PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY PACIFIC GAS AND ELECTRIC COMPANY BY THAT INSTRUMENT RECORDED AUGUST 16, 1967 IN BOOK 7822 OF OFFICIAL RECORD AT PAGE 615;

THENCE ALONG THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID 2.00 ACRE PARCEL SOUTH 12° 36' 40" EAST 40.01 FEET TO A POINT ON A LINE PARALLEL AND 40.00 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES, TO SAID NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID PARALLEL LINE NORTH 78° 19' 00" EAST 165.68 FEET;

THENCE AT RIGHT ANGLES SOUTH 11° 41' 00" EAST 40.16 FEET;

THENCE PARALLEL TO THE SOUTHERLY OF SAID PARCEL 2 NORTH 78° 19' 00" EAST 211.68 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 2, SAID POINT BEING DISTANT ALONG SAID EASTERLY LINE NORTH 12° 36' 40" WEST 180.03 FEET FROM THE MOST EASTERLY CORNER OF SAID PARCEL 2;

THENCE ALONG SAID EASTERLY LINE NORTH 12° 36' 40" WEST 80.17 FEET TO SAID POINT OF BEGINNING.

PARCEL 4A:

AN EASEMENT FOR THE PURPOSES OF OPERATION, USE, INSPECTION, MAINTENANCE, REPAIR, REMOVAL AND FOR REPLACEMENT OF AN OVERHEAD ELECTRICAL DISTRIBUTION SYSTEMS WITHIN THE STRIPS OF LAND, AS RESERVED IN THAT CERTAIN GRANT DEED RECORDED SEPTEMBER 17, 1999 AS INSTRUMENT NO. 149B9321, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERLY CORNER OF SAID PARCEL THREE AS CONTAINED IN THAT CERTAIN DEED RECORDED MAY 28, 1999 AS DOCUMENT NO. 14835097;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL THREE SOUTH 78° 19' 00" WEST, 211.68 FEET;

THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL THREE NORTH 11° 41' 00" WEST, 35.32 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE NORTH 11° 41' 00" WEST, 4.84 FEET;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL THREE SOUTH 78° 19' 00" WEST, 71.32 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE THE FOLLOWING TWO (2) COURSES:

NORTH 84° 22' 47" EAST, 46.62 FEET;

NORTH 78° 07' 03" EAST, 24.96 FEET TO THE TRUE POINT OF BEGINNING.

APN: 086-32-040

PARCEL 5:

ALL THAT PORTION OF LAND DESIGNATED AND DELINEATED AS "PARCEL ONE" UNDER RESOLUTION NO. 6842, OF THE CITY OF MILPITAS AUTHORIZING THE LOT LINE ADJUSTMENT PROJECT NO. 2163, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON FEBRUARY 5, 1999, UNDER RECORDER'S SERIES NO. 14643238, OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF THAT PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY THE WESTERN PACIFIC RAILROAD COMPANY BY THAT INSTRUMENT RECORDED MARCH 27, 1967 IN BOOK 7675 OF OFFICIAL RECORDS AT PAGE 220; TOGETHER WITH THAT 2.00 ACRE PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY PACIFIC GAS AND ELECTRIC COMPANY BY THAT INSTRUMENT RECORDED AUGUST 16, 1967 IN BOOK 7822 OF OFFICIAL RECORDS AT PAGE 615; TOGETHER WITH A PORTION OF THAT PARCEL OF LAND CONVEYED TO FEDERAL PACIFIC ELECTRIC COMPANY BY AMERON, INC. BY THAT CORPORATION GRANT DEED RECORDED NOVEMBER 16, 1970 IN BOOK 9122 OF OFFICIAL RECORDS AT PAGE 195, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF THAT CERTAIN 60.00 FOOT STRIP OF LAND CONVEYED BY ANNIE M. CARSON TO THE WESTERN PACIFIC RAILROAD COMPANY BY DEED RECORDED DECEMBER 29, 1920 IN BOOK 527 OF DEEDS AT PAGE 222, SANTA CLARA COUNTY RECORDS, AND THE NORTHERLY LINE OF THAT CERTAIN 124.075 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM MILDRED A. FOUNTAIN TO THE WESTERN PACIFIC RAILROAD COMPANY AS RECORDED JUNE 18, 1951 IN VOLUME 2234 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY AT PAGE 86;

THENCE FROM SAID POINT OF COMMENCEMENT NORTH 78° 19' 00" EAST ALONG THE NORTHERLY LINE OF SAID 124.075 ACRE TRACT OF LAND, A DISTANCE OF 30.68 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 78° 19' 00" EAST 1284.33 FEET TO THE NORTHEAST CORNER OF SAID 2.00 ACRE PARCEL OF LAND;

THENCE ALONG THE EASTERLY LINE OF SAID 2.00 ACRE PARCEL SOUTH 12° 36' 40" EAST 400.06 FEET TO THE NORTHERLY LINE OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD DECEMBER 28, 1971 IN BOOK 294 OF MAPS AT PAGE 35, SANTA CLARA COUNTY RECORDS;

THENCE CONTINUING ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, SOUTH 12° 36' 40" EAST 40.01 FEET TO A POINT ON A LINE PARALLEL AND 40.00 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES, TO SAID NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID PARALLEL LINE, SOUTH 78° 19' 00" WEST 173.36 FEET;  
THENCE AT RIGHT ANGLES, SOUTH 11° 41' 00" EAST 50.16 FEET TO A LINE PARALLEL AND 170.00 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES, TO THE SOUTHERLY LINE OF SAID PARCEL 2.

THENCE ALONG SAID PARALLEL LINE SOUTH 78° 19' 00" WEST 438.84 FEET;

THENCE AT RIGHT ANGLES, SOUTH 11° 41' 00" EAST 170.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 2, SAID POINT BEING DISTANT ALONG SAID SOUTHERLY LINE SOUTH 78° 19' 00" WEST 992.48 FEET FROM THE MOST EASTERLY CORNER OF SAID PARCEL 2;

THENCE ALONG SAID SOUTHERLY LINE SOUTH 78° 19' 00" WEST 503.15 FEET TO THE

SDCA\_1467206.1

WESTERLY LINE OF SAID PARCEL 2, SAID WESTERLY LINE BEING THE EASTERLY LINE OF PIPER DRIVE (64 FEET WIDE) AS SHOWN ON SAID PARCEL MAP;

THENCE ALONG THE GENERAL WESTERLY BOUNDARY OF SAID PARCEL 2 AND THE EASTERLY LINES OF SAID PIPER DRIVE, THE FOLLOWING THREE (3) COURSES:

1. NORTH 23° 46' 01" WEST 148.86 FEET;
2. NORTHERLY AND NORTHEASTERLY ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, THROUGH A CENTRAL ANGLE OF 64° 37' 23" FOR AN ARC LENGTH OF 67.67 FEET TO A POINT OF REVERSE CURVATURE;
3. NORTHERLY ALONG SAID REVERSE CURVE TO THE LEFT, HAVING A RADIUS OF 66.00 FEET, THROUGH A CENTRAL ANGLE 54° 17' 31" FOR AN ARC LENGTH OF 62.54 FEET TO THE SOUTHERLY LINE OF SAID PARCEL OF LAND CONVEYED BY THAT INSTRUMENT RECORDED MARCH 27, 1967 IN BOOK 7675 OF OFFICIAL RECORDS AT PAGE 220;

THENCE ALONG THE SOUTHERLY AND WESTERLY BOUNDARY OF THE LAST SAID PARCEL OF LAND THE FOLLOWING TWO (2) COURSES:

1. CONTINUING ALONG THE LAST SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 137° 38' 11" FOR AN ARC LENGTH OF 158.55 FEET;
2. NORTH 23° 46' 01" WEST 367.21 FEET TO SAID POINT OF BEGINNING.

## EXHIBIT C

### LEGAL DESCRIPTION OF CURRENT MS PARCELS

All those certain lots, tracts or parcels of real estate located in the City of Milpitas, County of Santa Clara, State of California, and more particularly described as follows:

#### PARCEL 1A:

BEING A PORTION OF PARCELS A AND C AS SAID PARCELS ARE SHOWN ON THAT CERTAIN PARCEL MAP RECORDED NOVEMBER 20, 1987, IN BOOK 580 OF MAPS, AT PAGES 49 AND 50 (580 M 49) IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL A ON THE NORTHEASTERLY RIGHT OF WAY LINE OF PIPER DRIVE (RIGHT OF WAY VARIES) AS SAID DRIVE IS SHOWN ON SAID MAP (580 M 49); THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES: 1) NORTH 23°47'00" WEST 180.36 FEET; 2) SOUTH 66°13'00" WEST 16.00 FEET; 3) NORTH 23°47'00" WEST 84.37 FEET TO THE NORTHERLY LINE OF SAID PARCEL A; THENCE LEAVING SAID NORTHEASTERLY RIGHT OF WAY LINE EASTERLY ALONG SAID NORTHERLY LINE AND THE NORTHERLY LINE OF SAID PARCEL C N78°19'00" EAST 589.22 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 11°41'00" EAST 170.50 FEET TO THE SOUTHERLY LINE OF SAID PARCEL A; THENCE WESTERLY ALONG SAID SOUTHERLY LINE SOUTH 69°00'00" WEST 525 FEET TO THE POINT OF BEGINNING.

APN: 086-32-036

#### PARCEL 1B:

BEING A PORTION OF PARCEL B AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED NOVEMBER 20, 1987, IN BOOK 580 OF MAPS AT PAGES 49 AND 50 (580 M 49), IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL B ON THE NORTHERLY LINE THEREOF, BEING ALSO ON THE NORTHEASTERLY RIGHT OF WAY LINE OF PIPER DRIVE (RIGHT OF WAY VARIES) AS SAID DRIVE IS SHOWN ON SAID MAP (580 M 49); THENCE EASTERLY ALONG SAID NORTHERLY LINE NORTH 69°00'00" EAST 525.00 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 11°41'00" EAST 63.52 FEET; THENCE SOUTH 21°00'00" EAST 233.62 FEET TO THE SOUTHERLY LINE OF SAID PARCEL B; THENCE ALONG SAID SOUTHERLY LINE THE FOLLOWING TWO (2) COURSES: 1) SOUTH 69°00'00" WEST 169.00 FEET; 2) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 372.25 FEET THROUGH A CENTRAL ANGLE OF 66°51'36" AN ARC DISTANCE OF 434.39 FEET TO SAID

NORTHEASTERLY RIGHT OF WAY LINE OF PIPER DRIVE; THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE NORTH 23°47'00" WEST 70.42 FEET TO THE POINT OF BEGINNING.

APN: 086-32-035

PARCEL 1C:

BEING A PORTION OF PARCELS A, B AND C AS SAID PARCELS ARE SHOWN ON THAT CERTAIN PARCEL MAP RECORDED NOVEMBER 20, 1987, IN BOOK 580 OF MAPS, AT PAGES 49 AND 50 (580 M 49) IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE MOST EASTERLY CORNER OF SAID PARCEL C ON THE SOUTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID SOUTHERLY LINE AND THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 69°00'00" WEST 623.05 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 21°00'00" WEST 233.62 FEET; THENCE NORTH 11°41'00" WEST 234.02 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE NORTH 78°19'00" EAST 443.47 FEET TO THE EASTERLY LINE OF SAID PARCEL C; THENCE ALONG THE GENERAL EASTERLY LINE OF SAID PARCEL C THE FOLLOWING FOUR (4) COURSES: 1) SOUTH 11°41'00" EAST 86.52 FEET; 2) SOUTH 21°00'00" EAST 117.02 FEET; 3) NORTH 78°19'00" EAST 190.24 FEET; 4) SOUTH 11°41'00" EAST 161.69 FEET TO THE POINT OF BEGINNING.

APN: 086-32-034

PARCEL 1D:

PARCEL D, AS DESIGNATED ON THE PARCEL MAP ENTITLED, "PORTION OF LOT 30 OF THE MILPITAS RANCHO IN THE CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20, 1987 IN BOOK 580 OF MAPS, AT PAGES 49 AND 50.

APN: 086-32-033

**EXHIBIT D**

**CITATION TENTATIVE MAP –  
DEVELOPMENT AGREEMENT CONDITION**

**[Please see attached.]**

EXHIBIT 1

CONDITIONS OF APPROVAL  
Citation Residential Project (MT08-0004, SD08-0002, UP08-0049)

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the Planning Commission on January 28, 2009, in accordance with these Conditions of Approval. (P)
2. Any deviation from the approved site plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
3. Conditional Use Permit No. U08-0049 and Site Development Permit No. SD08-0002 shall become null and void if the project is not commenced per the Zoning Ordinance within 18 months from the date of approval. (P)
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of 18 months if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein for the Conditional Use Permit and Site Development Permit. (P)
5. Major Tentative Map No. MT08-0004 shall be effective for two years, unless a time extension is requested and approved by the City Council upon recommendation from the Planning Commission. All other extensions shall be in accordance with State law. (P)
6. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)
7. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
8. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required landscaping shall be planted in place pursuant to the approved phasing plan as approved by the Planning Director or designee. (P)
9. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or

allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. The foregoing provisions are a material (demand/supply) condition to this approval. (E)

10. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the future Transit Area Community Facility District (CFD), and agree to pay the special taxes levied by CFD for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the Final Map recordation or prior to issuance of building permits for the first building in the project, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
11. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
  - A. Storm water connection fee is estimated to be \$268,336 based on 16 acres @ \$16,771 per acre. The water and sewer connection fees will be calculated at the time of building plan check submittal.
  - B. Water Service Agreement(s) for water meter(s) and detector check(s).
  - C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)
12. Prior to building permit issuance of each building, developer must pay all applicable development fees that are not a part of the TASP Impact fee, including but not limited to, connection fees (water, sewer and storm), plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)
13. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires within the subdivision and along project frontage, and remove related utility poles, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more, have to be undergrounded. (E)

**Site Development Permit:**

14. The applicant shall revise the architecture on the buildings' elevations to provide more articulation and relief from the streetscape and pedestrian corridors and other buildings, in the manner described in that certain Planning Division comment letter dated October

23, 2008. Prior to submittal of plans for any permit for grading, site improvement or building construction, the applicant shall submit plans that demonstrate such revised architecture to the satisfaction of the Planning Director or designee. (P)

15. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
16. Prior to issuance of building permits of each building, the developer shall pay the Transit Area Development Impact Fee. (P/E)

#### **Tentative Map**

17. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
18. At the time of final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval for the first phase of the development. (E)
19. Prior to final map approval, the developer shall obtain design approval and bond for construction of all necessary public improvements as identified below:
  - A. Piper Drive interim roadway improvement to Montague Expressway shall be designed and implemented to the satisfaction of the City Engineer or designee.
  - B. Construction of public streets "A", "B", "C" and "D" to the project boundary, including but not limited to signage and striping, street lights, curb & gutter, sidewalk, streetscape, and public utilities installation.

- C. Installation of necessary public utilities along project frontage on Piper Drive and proposed Public Street "A", "B", "C" and "D", including but limited to water, sewer, storm, recycle water, fire hydrants and service laterals.
- D. Dedication and construction of the proposed public park.
- E. Undergrounding of overhead utilities along Piper Drive project frontage.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)

- 20. Prior to final map approval, the developer shall enter into a development agreement with the sub-district transit area property owners (Milpitas Station, LLC and Swensen) for all necessary public improvements as identified below:
  - A. Milpitas Boulevard frontage improvements including but not limited to, landscaped median islands from Gibraltar Drive to Montague Expressway, new curb, gutter, and sidewalk installation, roadway structural section and slurry seal of the entire street frontage, signage and striping, street lights, vehicle feed back signs, tree wells and street trees, fire hydrants, and bus stop installation. Public-Private partnerships for landscape improvements on Milpitas Boulevard along the frontage of the PG&E parcel located north of the development will also be developed.
  - B. Traffic signal installation at Milpitas Boulevard and proposed public Street "A".
  - C. Any railroad crossing improvements at Milpitas Boulevard.
  - D. Recycle Water main line installation from Gibraltar Drive intersection to the railroad crossing on Milpitas Boulevard.
  - E. Piper Drive interim roadway improvement from the proposed "A" street to Montague Expressway, including but not limited to pavement restoration, signage and striping, street lights, sidewalk, and streetscape installation, and if necessary any railroad crossing improvements.

- F. Construction of public street "A" from Milpitas Boulevard to Piper Drive, and public streets "B" and "C" to the project boundary, including but not limited to signage and striping, street lights, curb & gutter, sidewalk, streetscape, and public utilities installation.
- G. Installation of necessary public utilities along project frontage on Milpitas Boulevard, Piper Drive and proposed Public Street "A", "B" and "C", including but limited to water, sewer, storm, recycle water, fire hydrants and service laterals.
- H. Dedication and construction of proposed public park.
- I. Contribution or construction of the sewer project known as 11E (Upsizing of the sewer lines on Curtis Avenue).

Subject Development Agreement shall be submitted to the City for review and approval, and must be recorded prior to OR concurrent with recordation of the first Final Map for the Piper-Montague Sub-District. (E)

- 21. Prior to any building permit issuance, the developer shall record a Final Map. (E)
- 22. The tentative map and the subsequent final map(s) shall designate all common lots and easements as lettered lots or lettered easements. (E)
- 23. Prior to final map recordation, the developer shall submit to the City a digital format of the final map (AutoCAD format). All parcel maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
- 24. The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. (E)
- 25. Prior to final map recordation, the developer shall vacate the existing easements that are not needed and relocate/abandon the existing private/public utilities to the city satisfaction. (E)
- 26. Prior to or concurrent with recordation of the first Final Map for the project, developer shall dedicate Lot "J" to the City in fee, as public park land. (E)
- 27. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
- 28. Developer shall make changes as noted on Engineering Services Exhibit "T" (dated 12/3/2008) and submit a Mylar of the revised tentative map to the Planning Division

within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. (E)

29. Prior to recordation of final map, the applicant shall revise Sheet C-01 to reflect allowable open space areas for the purpose of being consistent with the Transit Area Specific Plan and any credits towards open space requirements. (P)

(P): Planning Division

(E): Engineering Division

**EXHIBIT E**

**MS TENTATIVE MAP – INFRASTRUCTURE CONDITIONS**

**[Please see attached.]**

## EXHIBIT 1

### CONDITIONS OF APPROVAL MINOR TENTATIVE MAP NO. TM08-0001, MILPITAS STATION MASTER DEVELOPMENT MAP

#### General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval. (PLN)

Any deviation from the approved master tentative map, or other approved submittal shall require that, prior to the recordation of the Final Map, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Engineer or Designee. If the City Engineer or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. (PLN)

- A. The preliminary landscape plan is submitted for informational purposes only. The details of which will be reviewed under a separate Site Development Permit.

- B. The applicant and staff shall work on exploring opportunities for additional parking around the public park.

2. Minor Vesting Tentative Map No. TM08-0001 shall become null and void if the project is not commenced within 24 months from the date of approval. Pursuant to Section 6.02-2 of the Subdivision Ordinance of the City of Milpitas the filing of the map may be extended by two years or by any time specified in accordance with State law. (PLN)

Pursuant to Section 6.02-2 of the Subdivision Ordinance, the owner or designee shall have the right to request an extension of Minor Vesting Tentative Map No. TM08-0001 if said request is made, filed and approved by the City Council prior to expiration dates set forth herein.

3. The applicant shall submit an agreement for the density averaging of the project to the satisfaction of the City Attorney. The recordation of this agreement with the County of Santa Clara shall occur prior to the recordation of the final map. (PLN/CA)

#### Engineering/Public Works

4. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.
5. At the time of parcel map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval for the first phase of the development.

6. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the future Transit Area Community Facility District (CFD), and agree to pay the special taxes levied by CFD for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the parcel map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents.
7. Prior to issuance of building permits, the developer shall pay the Transit Area Development Impact Fee. Some improvements stated in Condition No. 8 may be credited against the Impact Fee through a reimbursement agreement.
8. Prior to parcel map approval, the developer shall obtain design approval or bond for construction of all necessary public improvements as identified below:
  - A. Milpitas Boulevard frontage improvement including but not limited to landscaped median islands from Gibraltar Drive to Montague Expressway, new curb, gutter, sidewalk installation, slurry seal the entire street frontage, signage and striping, street lights, tree wells and street trees, fire hydrants, and bus stop installation. Public-private partnerships for landscape improvements along Milpitas Boulevard along the frontage of the PG&E parcel located north of the development will also be developed.
  - B. Traffic signal installation at Milpitas Boulevard and proposed Public Street "A".
  - C. Railroad crossing improvements at Milpitas Boulevard, including but not limited to concrete encasement and crossing gate arms.
  - D. Recycle Water main line installation from Gibraltar Drive intersection to the railroad crossing on Milpitas Boulevard.
  - E. Piper Drive interim roadway improvements from the proposed "A" street to Montague Expressway as deemed necessary to the satisfaction of the City Engineer.
  - F. Construction of Public Street "A" from Milpitas Boulevard to Piper Drive, and Public Streets "B" and "C" to the project boundary, including but not limited to signage and striping, street lights, curb & gutter, sidewalk, streetscape, and public utilities installation.
  - G. Installation of necessary public utilities along project frontage on Milpitas Boulevard, Piper Drive and proposed Public Street "A", "B" and "C", including but limited to water, sewer, storm, recycle water, fire hydrants and service laterals.
  - H. Undergrounding of overhead utilities consistent with Condition Number 20 below.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such

as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance of the first production unit.

9. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
  - A. Storm water connection fee of \$219,700 based on 13.1 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time of building plan check submittal.
  - B. Water Service Agreement(s) for water meter(s) and detector check(s).
  - C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
10. Prior to any map recordation, the developer shall prepare a focused traffic Impact Analysis (TIA). Prior to any building permit issuance, the developer shall address all required mitigation and pay related fees identified in the TIA. The scope of analysis shall be determined and approved by the City.
11. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.
12. Prior to any building permit issuance, the developer shall record a parcel map.
13. The tentative map and the subsequent parcel map shall designate all common lots and easements as lettered lots or lettered easements.
14. Show on the tentative map how the site will drain. Drainage facilities outletting sump conditions shall be designed to convey the flows and protect all buildings.
15. Prior to recordation of any parcel map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All parcel maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3.
16. The developer shall dedicate on the parcel map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes.
17. Prior to parcel map recordation, the developer shall vacate the existing easements that are not needed and relocate/abandon the existing private/public utilities to the city satisfaction.
18. Prior to parcel map recordation, the developer shall record the proposed lot line adjustments shown on the Engineering Services exhibit "T" dated 9/18/08.

19. Prior to or concurrent with the parcel map recordation developer shall offer to dedicate Lot "E", proposed public park land, to the City in fee.
20. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires along Milpitas Boulevard frontage on pole number 1 through 5 and remove utility poles 2, 3, and 4, as shown on the Engineering Services Exhibit "T", dated 9/18/08. All existing poles within the proposed subdivision and the project frontage, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more, have to be undergrounded.
21. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping and signs as determined by sight distance shall not exceed two (2) feet when measured from street elevation.
22. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements (existing or proposed) and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.
23. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division.
24. Prior to any building permit issuance developer shall incorporate the following solid waste services requirements to the satisfaction of the City Engineer, including revisions to project plans:
  - A. Proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house self-contained compactor equipment. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to building permit issuance. The enclosure drains must discharge to the sanitary sewer line. Storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
  - B. The property management shall be responsible for solid waste management, including transfer of material to the compactors. Developer shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. The Plan shall state how the residential waste will be conveyed to the collection the compactor area for disposal. Show the path of travel for refuse. Demonstrate how recycling shall have a separately maintained process from garbage handling.
  - C. Prior to occupancy permit issuance, the property management shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Allied Waste Services (formally BFI). After the applicant has full occupancy, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact Allied Waste Services at (408) 432-1234.
25. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
  - A. At the time of building permit plan check submittal, the developer shall submit a Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be

consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.

26. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site Development Permit (SDP) Amendment application review.
27. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acre or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329.
28. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2,500 square feet or larger the developer shall:
  - A. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
  - B. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord. No. 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.
  - C. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.
29. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. To meet the recycle water guideline the developer shall:
  - A. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water

distribution lines (except for rehabilitated landscape less than 2,500 square feet along the future alignment).

- B. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
  - C. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.
- 30. It is the responsibility of the developer to obtain any necessary permits/approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division.
  - 31. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms.
  - 32. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hours prior to construction for location of utilities.
  - 33. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress.
  - 34. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review.
  - 35. The developer shall obtain information from the Milpitas Unified School District (MUSD) regarding providing services.
  - 36. Prior to demolishing the existing buildings, all utilities shall be properly disconnected. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used.

37. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
- A. What materials will be salvaged.
  - B. How materials will be processed during demolition.
  - C. Intended locations or businesses for reuse or recycling.
  - D. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
  - E. Applicant/Contractor shall make every effort to salvage materials for reuse and recycling.
38. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section, that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps". Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division.
39. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site.
40. Make changes as noted on Engineering Services Exhibit "T"(dated 9/18/2008) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied.
41. Based on the information submitted and the City records, the parcels on the north of the proposed Public Street "A" do not appear to be legal parcels of record. The developer shall submit and execute Lot Line Adjustments prior to the recordation of the Final Map.

## **EXHIBIT F**

### **SHARED INFRASTRUCTURE IMPROVEMENTS**

- Public Street A: Site prep, grading, underground utilities, paving, curb, gutter, sidewalk, lighting, landscaping.
- Public Street B: Site prep, grading, underground utilities, paving, curb, gutter, sidewalk, lighting, landscaping.
- Public Street C: Site prep, grading, underground utilities, paving, curb, gutter, sidewalk, lighting, landscaping.
- Public Street D: Site prep, grading, underground utilities, paving, curb, gutter, sidewalk, lighting, landscaping.
- Interim Piper Drive: Street improvements, storm drain installation, media filter, curb, gutter, sidewalk, joint trench, lighting, landscaping.
- Milpitas Boulevard: Traffic Signal at intersection of A Street and Milpitas Blvd.

**Piper Montague Area  
Cost Share Allocation**

	<b>Total</b>	<b>Citation</b>	<b>Milpitas Station</b>	<b>Swenson</b>
	100%	44%	26%	30%
Total Estimated Cost	\$3,350,626	\$1,474,275	\$871,163	\$1,005,188
Total Units	1437	639	318	480
Fee per Unit	\$2,332	\$2,307	\$2,740	\$2,094

**Summary of Estimated Cost**

Estimate per CB & G		\$2,792,188
Design	10.00%	\$279,219
Management, Bonds Etc	10.00%	\$279,219
Total		<u>\$3,350,626</u>



**Carlson, Barbee  
& Gibson, Inc.**

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ENGINEER'S PRELIMINARY COST ESTIMATE  
**SHARED IMPROVEMENTS**  
**PIPER / MONTAGUE SUBDISTRICT**  
**MILPITAS, CALIFORNIA**

July 8, 2009  
Job No.: 1543-000

**Total  
Construction  
Costs**

**ON-SITE IMPROVEMENTS**

PUBLIC STREET A <i>(Before building demolition)</i>	\$	1,153,658
PUBLIC STREET A <i>(Ultimate Configuration)</i>	\$	261,303
PUBLIC STREET B	\$	219,987
PUBLIC STREET C	\$	183,331
PUBLIC STREET D	\$	271,600

**SHARED TOTAL \$ 2,089,877**

**OFF-SITE IMPROVEMENTS**

PIPER DRIVE	\$	414,311
TRAFFIC SIGNALS	\$	288,000
SOUTH MILPITAS BOULEVARD		NIC

**OFF-SITE TOTAL \$ 702,311**

**TOTAL CONSTRUCTION COST \$ 2,792,188**

Notes:

- a) Park improvements are not a part of this estimate.
- b) Estimate assumes all facilities are constructed at one time.
- c) All improvements associated with South Milpitas Boulevard are included in a separate estimate.

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Updated: 7/8/2009



# Carlson, Barbee & Gibson, Inc.

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## ENGINEER'S PRELIMINARY COST ESTIMATE PUBLIC STREET A (BEFORE BUILDING DEMOLITION) PIPER / MONTAGUE SUBDISTRICT MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Fine Grading (RW - RW)	79,000	SF	\$ 0.50	\$ 39,500.00
2	6" AC Paving	43,000	SF	\$ 2.70	\$ 116,100.00
3	6" Aggregate Base	43,000	SF	\$ 0.90	\$ 38,700.00
4	Decorative Paving (Along parking lane)	5,000	SF	\$ 1.50	\$ 7,500.00
5	Curb & Gutter (Including subdrain & AB cushion)	2,100	LF	\$ 15.00	\$ 31,500.00
6	Temporary AC Berm	1,100	LF	\$ 5.00	\$ 5,500.00
7	Temporary Valley Gutter	500	LF	\$ 8.00	\$ 4,000.00
8	6" Concrete Sidewalk (Including AB cushion)	16,000	SF	\$ 4.00	\$ 64,000.00
9	Handicap Ramps	15	EA	\$ 1,000.00	\$ 15,000.00
10	Monuments	7	EA	\$ 350.00	\$ 2,450.00
11	Signing and Striping	1	LS	\$ 5,000.00	\$ 5,000.00
Subtotal Street Work					\$ 329,250.00
<b><u>STORM DRAIN</u></b>					
12	Catch Basins	11	EA	\$ 2,000.00	\$ 22,000.00
13	Manholes	11	EA	\$ 3,500.00	\$ 38,500.00
14	15" Storm Drain Pipe	540	LF	\$ 30.00	\$ 16,200.00
15	18" Storm Drain Pipe	210	LF	\$ 36.00	\$ 7,560.00
16	24" Storm Drain Pipe	290	LF	\$ 48.00	\$ 13,920.00
17	30" Storm Drain Pipe	230	LF	\$ 60.00	\$ 13,800.00
18	36" Storm Drain Pipe	530	LF	\$ 72.00	\$ 38,160.00
Subtotal Storm Drain					\$ 150,140.00
<b><u>SANITARY SEWER</u></b>					
19	Manholes	8	EA	\$ 2,500.00	\$ 20,000.00
20	6" PVC Sanitary Sewer Pipe	170	LF	\$ 27.00	\$ 4,590.00
21	10" PVC Sanitary Sewer Pipe	1,200	LF	\$ 44.00	\$ 52,800.00
22	Service Stubs	3	EA	\$ 1,000.00	\$ 3,000.00
23	Connect to Existing	1	EA	\$ 5,000.00	\$ 5,000.00
Subtotal Sanitary Sewer					\$ 85,390.00
<b><u>WATER SUPPLY</u></b>					
24	8" PVC Water Line (Including all appurtenances)	170	LF	\$ 36.00	\$ 6,120.00
25	12" PVC Water Line (Including all appurtenances)	1,610	LF	\$ 54.00	\$ 86,940.00
26	Fire Hydrants	4	EA	\$ 3,000.00	\$ 12,000.00
27	Connect to Existing	2	EA	\$ 5,000.00	\$ 10,000.00
Subtotal Water Supply					\$ 115,060.00

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Updated: 7/8/2009

**Carlson, Barbee & Gibson, Inc.**

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>RECYCLED WATER</u></b>					
26	6" PVC Recycled Water Line <i>(including all appurtenances)</i>	1,070	LF	\$ 28.00	\$ 29,960.00
29	Irrigation Services	7	EA	\$ 750.00	\$ 5,250.00
Subtotal Recycled Water					\$ 35,210.00
<b><u>ELECTRICAL</u></b>					
30	Electroliers <i>(Assume 1 every 150)</i>	11	EA	\$ 4,000.00	\$ 44,000.00
31	Joint Trench	1,500	LF	\$ 110.00	\$ 165,000.00
Subtotal Electrical					\$ 209,000.00
<b><u>LANDSCAPE</u></b>					
32	Parkway Landscape Strip	17,500	SF	\$ 6.00	\$ 105,000.00
33	Irrigation Sleeves	10	EA	\$ 1,000.00	\$ 10,000.00
Subtotal Landscape					\$ 115,000.00
<b>SUBTOTAL PUBLIC STREET A CONSTRUCTION COST</b>					<b>\$ 1,039,050.00</b>
<b>15% CONTINGENCY</b>					<b>\$ 155,857.50</b>
<b>TOTAL PUBLIC STREET A CONSTRUCTION COST</b>					<b>\$ 1,194,907.50</b>
<b>PG&amp;E REFUND (1,500 LF x 27.50)</b>					<b>\$ (41,250.00)</b>
<b>TOTAL PUBLIC STREET A CONSTRUCTION COST</b>					<b>\$ 1,153,657.50</b>

**Notes:**

1. Road section is based on the traffic index and pavement standards per City of Milpitas guidelines.



# Carlson, Barbee & Gibson, Inc.

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## ENGINEER'S PRELIMINARY COST ESTIMATE PUBLIC STREET A (ULTIMATE CONFIGURATION) PIPER / MONTAGUE SUBDISTRICT MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Demo Existing AC Berm	1,100	LF	\$ 2.00	\$ 2,200.00
2	Demo Existing Asphalt	4,800	SF	\$ 2.00	\$ 9,600.00
3	Demo Temporary Valley Gutter	500	LF	\$ 3.00	\$ 1,500.00
4	Demo Temporary Handicap Ramps	2	EA	\$ 500.00	\$ 1,000.00
5	Fine Grading	20,000	SF	\$ 0.50	\$ 10,000.00
6	6" AC Paving	7,000	SF	\$ 2.70	\$ 18,900.00
7	6" Aggregate Base	7,000	SF	\$ 0.90	\$ 6,300.00
8	Decorative Paving (Along parking lane)	3,000	SF	\$ 1.50	\$ 4,500.00
9	Curb & Gutter (Including subdrain & AB cushion)	1,100	LF	\$ 15.00	\$ 16,500.00
10	6' Concrete Sidewalk (Including AB cushion)	3,800	SF	\$ 4.00	\$ 15,200.00
11	Repair Existing Sidewalk (25% of reuse)	750	SF	\$ 4.00	\$ 3,000.00
12	Handicap Ramps	5	EA	\$ 1,000.00	\$ 5,000.00
13	Monuments	7	EA	\$ 350.00	\$ 2,450.00
14	Signing and Striping	1	LS	\$ 2,000.00	\$ 2,000.00
15	Traffic Control	1	LS	\$ 50,000.00	\$ 50,000.00
Subtotal Street Work					\$ 148,150.00
<b><u>STORM DRAIN</u></b>					
16	Catch Basins	3	EA	\$ 2,000.00	\$ 6,000.00
17	15" Storm Drain Pipe	45	LF	\$ 30.00	\$ 1,350.00
Subtotal Storm Drain					\$ 7,350.00
<b><u>WATER SUPPLY</u></b>					
18	12" PVC Water Line (including all appurtenances)	430	LF	\$ 54.00	\$ 23,220.00
19	Connect to Existing	2	EA	\$ 5,000.00	\$ 10,000.00
20	Abandon temporary 12" water line	1	LS	\$ 5,000.00	\$ 5,000.00
21	Reinstall Existing Fire Hydrant	1	EA	\$ 2,500.00	\$ 2,500.00
Subtotal Water Supply					\$ 40,720.00
<b><u>ELECTRICAL</u></b>					
22	Relocate Existing Electroliers	2	EA	\$ 2,000.00	\$ 4,000.00
Subtotal Electrical					\$ 4,000.00
<b><u>LANDSCAPE</u></b>					
23	Parkway Landscape Strip	4,500	SF	\$ 6.00	\$ 27,000.00
Subtotal Landscape					\$ 27,000.00

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**Carlson, Barbee & Gibson, Inc.**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Amount</b>
SUBTOTAL PUBLIC STREET A CONSTRUCTION COST					\$ 227,220.00
15% CONTINGENCY					\$ 34,083.00
TOTAL PUBLIC STREET A CONSTRUCTION COST					\$ 261,303.00

**Notes:**

1. Road section is based on the traffic index and pavement standards per City of Milpitas guidelines.



# Carlson, Barbee & Gibson, Inc.

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## ENGINEER'S PRELIMINARY COST ESTIMATE PUBLIC STREET B PIPER / MONTAGUE SUBDISTRICT MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Fine Grading (RW - RW)	16,000	SF	\$ 0.50	\$ 8,000.00
2	4" AC Paving	9,600	SF	\$ 1.80	\$ 17,280.00
3	6" Aggregate Base	9,600	SF	\$ 0.90	\$ 8,640.00
4	Decorative Paving (Along parking lane)	1,850	SF	\$ 1.50	\$ 2,775.00
5	Curb & Gutter (Including subdrain & AB cushion)	640	LF	\$ 15.00	\$ 9,600.00
6	5' Concrete Sidewalk (Including AB cushion)	3,300	SF	\$ 4.00	\$ 13,200.00
7	Handicap Ramps	2	EA	\$ 1,000.00	\$ 2,000.00
8	Monuments	1	EA	\$ 350.00	\$ 350.00
9	Signing and Striping	1	LS	\$ 2,000.00	\$ 2,000.00
Subtotal Street Work					\$ 63,845.00
<b><u>STORM DRAIN</u></b>					
10	Catch Basins	6	EA	\$ 2,000.00	\$ 12,000.00
11	Field Inlets	1	EA	\$ 2,000.00	\$ 2,000.00
12	Manholes	4	EA	\$ 3,500.00	\$ 14,000.00
13	15" Storm Drain Pipe	70	LF	\$ 30.00	\$ 2,100.00
14	18" Storm Drain Pipe	60	LF	\$ 36.00	\$ 2,160.00
15	24" Storm Drain Pipe	380	LF	\$ 48.00	\$ 18,240.00
Subtotal Storm Drain					\$ 50,500.00
<b><u>WATER SUPPLY</u></b>					
16	8" PVC Water Line (including all appurtenances)	330	LF	\$ 36.00	\$ 11,880.00
17	Fire Hydrants	1	EA	\$ 3,000.00	\$ 3,000.00
18	Services	2	EA	\$ 1,000.00	\$ 2,000.00
Subtotal Water Supply					\$ 16,880.00
<b><u>RECYCLED WATER</u></b>					
19	6" PVC Recycled Water Line (including all appurtenances)	340	LF	\$ 28.00	\$ 9,520.00
20	Irrigation Services	3	EA	\$ 2,000.00	\$ 6,000.00
Subtotal Recycled Water					\$ 15,520.00
<b><u>ELECTRICAL</u></b>					
21	Electroliers	2	EA	\$ 4,000.00	\$ 8,000.00
22	Joint Trench	320	LF	\$ 110.00	\$ 35,200.00
Subtotal Electrical					\$ 43,200.00

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**Carlson, Barbee & Gibson, Inc.**

Item	Description	Quantity	Unit	Unit Price	Amount
<b>LANDSCAPE</b>					
23	Parkway Landscape Strip	1,500	SF	\$ 6.00	\$ 9,000.00
	Subtotal Landscape				\$ 9,000.00
	SUBTOTAL PUBLIC STREET B CONSTRUCTION COST				\$ 198,945.00
	15% CONTINGENCY				\$ 29,841.75
	TOTAL PUBLIC STREET B CONSTRUCTION COST				\$ 228,786.75
	PG&E REFUND (320 LF x \$27.50)				\$ (8,800.00)
	TOTAL PUBLIC STREET B CONSTRUCTION COST				\$ 219,986.75

**Notes:**

1. Road section is based on the traffic index and pavement standards per City of Milpitas guidelines.



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& Gibson, Inc.**

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ENGINEER'S PRELIMINARY COST ESTIMATE  
**PUBLIC STREET C**  
**PIPER / MONTAGUE SUBDISTRICT**  
MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Fine Grading (RWY - RWY)	12,000	SF	\$ 0.50	\$ 6,000.00
2	4" AC Paving	7,500	SF	\$ 1.80	\$ 13,500.00
3	6" Aggregate Base	7,500	SF	\$ 0.90	\$ 6,750.00
4	Decorative Paving (Along parking lane)	1,680	SF	\$ 1.50	\$ 2,520.00
5	Curb & Gutter (Including subdrain & AB cushion)	520	LF	\$ 15.00	\$ 7,800.00
6	5' Concrete Sidewalk (Including AB cushion)	2,700	SF	\$ 4.00	\$ 10,800.00
7	Handicap Ramps	4	EA	\$ 1,000.00	\$ 4,000.00
8	Monuments	1	EA	\$ 350.00	\$ 350.00
9	Signing and Striping	1	LS	\$ 2,000.00	\$ 2,000.00
Subtotal Street Work					\$ 53,720.00
<b><u>STORM DRAIN</u></b>					
10	Catch Basins	4	EA	\$ 2,000.00	\$ 8,000.00
11	Manholes	3	EA	\$ 3,500.00	\$ 10,500.00
12	15" Storm Drain Pipe	350	LF	\$ 30.00	\$ 10,500.00
Subtotal Storm Drain					\$ 29,000.00
<b><u>SANITARY SEWER</u></b>					
13	Manholes	1	EA	\$ 2,500.00	\$ 2,500.00
14	6" PVC Sanitary Sewer Pipe	150	LF	\$ 27.00	\$ 4,050.00
Subtotal Sanitary Sewer					\$ 6,550.00
<b><u>WATER SUPPLY</u></b>					
15	8" PVC Water Line (Including all appurtenances)	370	LF	\$ 36.00	\$ 13,320.00
16	Fire Hydrants	1	EA	\$ 3,000.00	\$ 3,000.00
Subtotal Water Supply					\$ 16,320.00
<b><u>RECYCLED WATER</u></b>					
17	6" PVC Recycled Water Line (Including all appurtenances)	260	LF	\$ 28.00	\$ 7,280.00
18	Irrigation Meter	1	EA	\$ 2,000.00	\$ 2,000.00
Subtotal Recycled Water					\$ 9,280.00

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**Carlson, Barbee & Gibson, Inc.**

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>ELECTRICAL</u></b>					
19	Electroliers	2	EA	\$ 4,000.00	\$ 8,000.00
20	Joint Trench	320	LF	\$ 110.00	\$ 35,200.00
Subtotal Electrical					\$ 43,200.00
<b><u>LANDSCAPE</u></b>					
21	Parkway Landscape Strip	1,500	SF	\$ 6.00	\$ 9,000.00
Subtotal Landscape					\$ 9,000.00
SUBTOTAL PUBLIC STREET C CONSTRUCTION COST					\$ 167,070.00
15% CONTINGENCY					\$ 25,060.50
TOTAL PUBLIC STREET C CONSTRUCTION COST					\$ 192,130.50
PG&E REFUND (320 LF x \$27.50)					\$ (8,800.00)
TOTAL PUBLIC STREET C CONSTRUCTION COST					\$ 183,330.50

**Notes:**

1. Road section is based on the traffic index and pavement standards per City of Milpitas guidelines.



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## ENGINEER'S PRELIMINARY COST ESTIMATE PUBLIC STREET D PIPER / MONTAGUE SUBDISTRICT MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Fine Grading (RW - RW)	24,000	SF	\$ 0.50	\$ 12,000.00
2	4" AC Paving	15,100	SF	\$ 1.80	\$ 27,180.00
3	6" Aggregate Base	15,100	SF	\$ 0.90	\$ 13,590.00
4	Decorative Paving (Along parking lane)	2,900	SF	\$ 1.50	\$ 4,350.00
5	Curb & Gutter (Including subdrain & AB cushion)	980	LF	\$ 15.00	\$ 14,700.00
6	5' Concrete Sidewalk (Including AB cushion)	4,700	SF	\$ 4.00	\$ 18,800.00
7	Handicap Ramps	4	EA	\$ 1,000.00	\$ 4,000.00
8	Monuments	1	EA	\$ 350.00	\$ 350.00
9	Signing and Striping	1	LS	\$ 2,000.00	\$ 2,000.00
Subtotal Street Work					\$ 96,970.00
<b><u>STORM DRAIN</u></b>					
10	Catch Basins	3	EA	\$ 2,000.00	\$ 6,000.00
11	Field Inlets	2	EA	\$ 2,000.00	\$ 4,000.00
12	Manholes	2	EA	\$ 3,500.00	\$ 7,000.00
13	15" Storm Drain Pipe	40	LF	\$ 30.00	\$ 1,200.00
14	18" Storm Drain Pipe	50	LF	\$ 36.00	\$ 1,800.00
15	24" Storm Drain Pipe	420	LF	\$ 48.00	\$ 20,160.00
Subtotal Storm Drain					\$ 40,160.00
<b><u>WATER SUPPLY</u></b>					
16	8" PVC Water Line (Including all appurtenances)	500	LF	\$ 36.00	\$ 18,000.00
17	Fire Hydrants	2	EA	\$ 3,000.00	\$ 6,000.00
18	Services	3	EA	\$ 1,000.00	\$ 3,000.00
Subtotal Water Supply					\$ 27,000.00
<b><u>ELECTRICAL</u></b>					
19	Electroliers	4	EA	\$ 4,000.00	\$ 16,000.00
20	Joint Trench	500	LF	\$ 110.00	\$ 55,000.00
Subtotal Electrical					\$ 71,000.00

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Updated: 7/8/2009

**Carlson, Barbee & Gibson, Inc.**

Item	Description	Quantity	Unit	Unit Price	Amount
<b>LANDSCAPE</b>					
21	Parkway Landscape Strip	2,000	SF	\$ 6.00	\$ 12,000.00
22	Irrigation Sleeves	1	EA	\$ 1,000.00	\$ 1,000.00
Subtotal Landscape					\$ 13,000.00
SUBTOTAL PIPER DRIVE CONSTRUCTION COST					\$ 248,130.00
15% CONTINGENCY					\$ 37,219.50
TOTAL PIPER DRIVE CONSTRUCTION COST					\$ 285,349.50
PG&E REFUND (500 LF x \$27.50)					\$ (13,750.00)
TOTAL PUBLIC STREET D CONSTRUCTION COST					\$ 271,599.50

**Notes:**

1. Road section is based on the traffic index and pavement standards per City of Milpitas guidelines.



# Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS

## ENGINEER'S PRELIMINARY COST ESTIMATE PIPER DRIVE (SOUTH OF PUBLIC STREET A) PIPER / MONTAGUE SUBDISTRICT MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Curb & Gutter <i>(including subdrain &amp; AB cushion)</i>	1,100	LF	\$ 15.00	\$ 16,500.00
2	Slurry Street Section	35,500	SF	\$ 1.00	\$ 35,500.00
3	5' Concrete Sidewalk <i>(including AB cushion)</i>	4,200	SF	\$ 4.00	\$ 16,800.00
4	Handicap Ramps	5	EA	\$ 1,000.00	\$ 5,000.00
5	Monuments	1	EA	\$ 350.00	\$ 350.00
6	Signing and Striping	1	LS	\$ 2,000.00	\$ 2,000.00
Subtotal Street Work					\$ 76,150.00
<b><u>STORM DRAIN</u></b>					
7	Manholes	2	EA	\$ 3,500.00	\$ 7,000.00
8	36" Storm Drain Pipe	710	LF	\$ 72.00	\$ 51,120.00
9	Connect to Existing	1	EA	\$ 5,000.00	\$ 5,000.00
10	Media Filter	1	EA	NIC	\$ -
Subtotal Storm Drain					\$ 63,120.00
<b><u>ELECTRICAL</u></b>					
11	Electroliers	6	EA	\$ 4,000.00	\$ 32,000.00
12	Joint Trench	900	LF	\$ 110.00	\$ 99,000.00
Subtotal Electrical					\$ 131,000.00
<b><u>LANDSCAPE</u></b>					
13	Parkway Landscape Strip	14,000	SF	\$ 6.00	\$ 84,000.00
14	2" Irrigation Service	1	EA	\$ 2,000.00	\$ 2,000.00
15	Irrigation Sleeves	4	EA	\$ 1,000.00	\$ 4,000.00
Subtotal Landscape					\$ 90,000.00
SUBTOTAL PIPER DRIVE CONSTRUCTION COST					\$ 360,270.00
15% CONTINGENCY					\$ 54,040.50
TOTAL PIPER DRIVE CONSTRUCTION COST					\$ 414,310.50
PG&E REFUND (900 LF x \$27.50)					\$ (24,750.00)
TOTAL PIPER DRIVE CONSTRUCTION COST					\$ 389,560.50

### Notes:

1. This estimate is based on improvements to Piper Drive located south of Public Street A as shown on the Revised Piper Drive Cross Section Exhibit dated September 15, 2008.
2. Media filter and storm pipe extend north of Public Street A for Subdistrict connection to City facilities and are included as shared costs.
3. The Project-Wide Media Filter Cost of \$300,000 was specifically omitted from this estimate.
4. Ultimate Piper Drive improvements to be completed after BART installation and is not included.

6111 BOLLINGER CANYON ROAD, SUITE 150 • SAN RAMON, CALIFORNIA 94583 • (925) 866-0322 • FAX (925) 866-8575 • www.cbangd.com

P:\1500 - 1590\1543-000E\stimate\Cost\Shared\lms 4.xls\PIPER Drive

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Updated: 7/8/2009



**Carlson, Barbee  
& Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

ENGINEER'S PRELIMINARY COST ESTIMATE  
OFF-SITE TRAFFIC SIGNALS  
PIPER / MONTAGUE SUBDISTRICT  
MILPITAS, CALIFORNIA

July 8, 2009  
Job No.: 1543-000

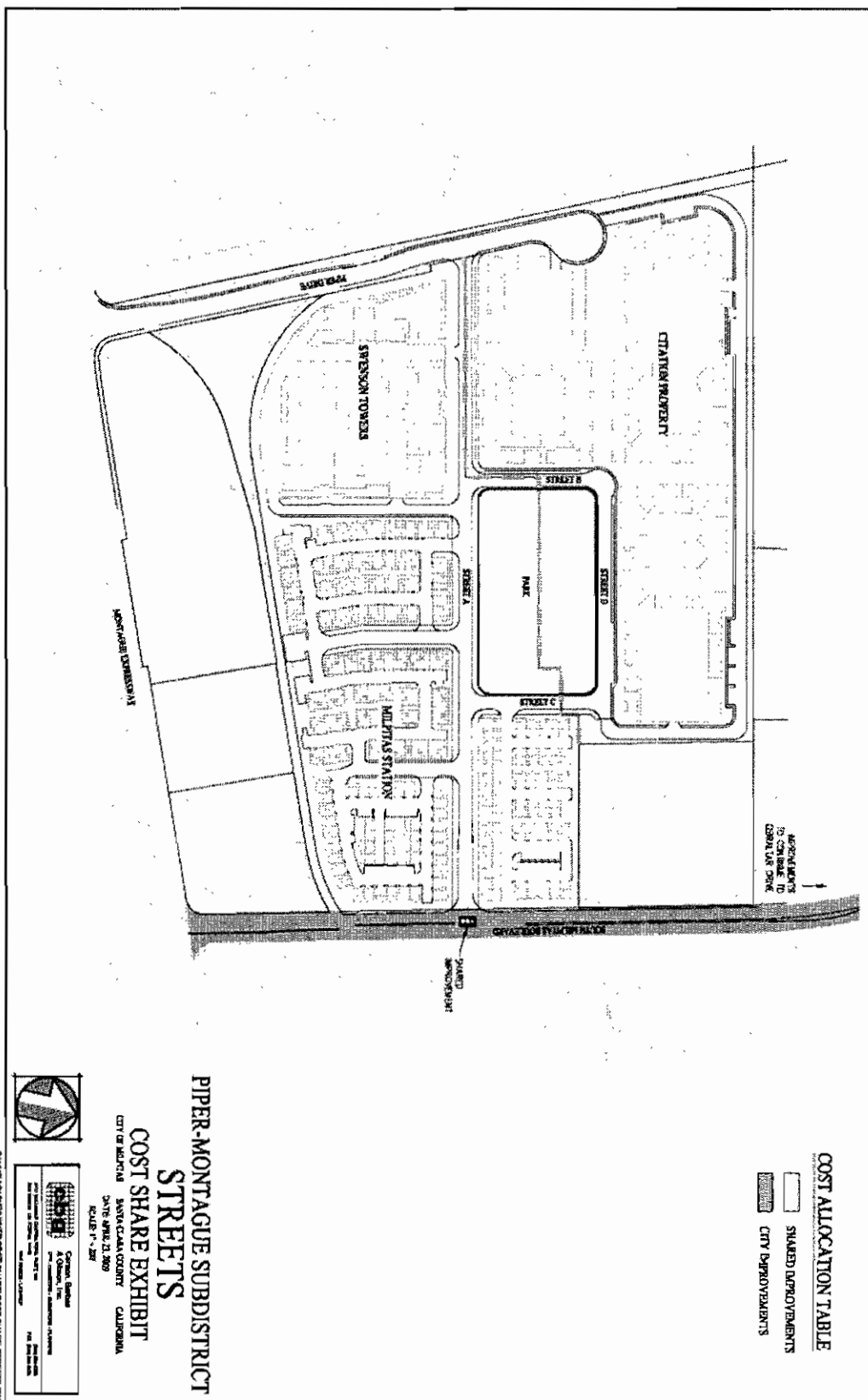
Item	Description	Quantity	Unit	Unit Price	Amount
<b>TRAFFIC SIGNALS</b>					
1	Public Street A at South Milpitas Boulevard	1	LS	\$ 250,000.00	\$ 250,000.00
<b>SUBTOTAL TRAFFIC SIGNALS CONSTRUCTION COST</b>					<b>\$ 250,000.00</b>
<b>15% CONTINGENCY</b>					<b>\$ 37,500.00</b>
<b>TOTAL TRAFFIC SIGNALS CONSTRUCTION COST (to nearest \$1,000)</b>					<b>\$ 288,000.00</b>

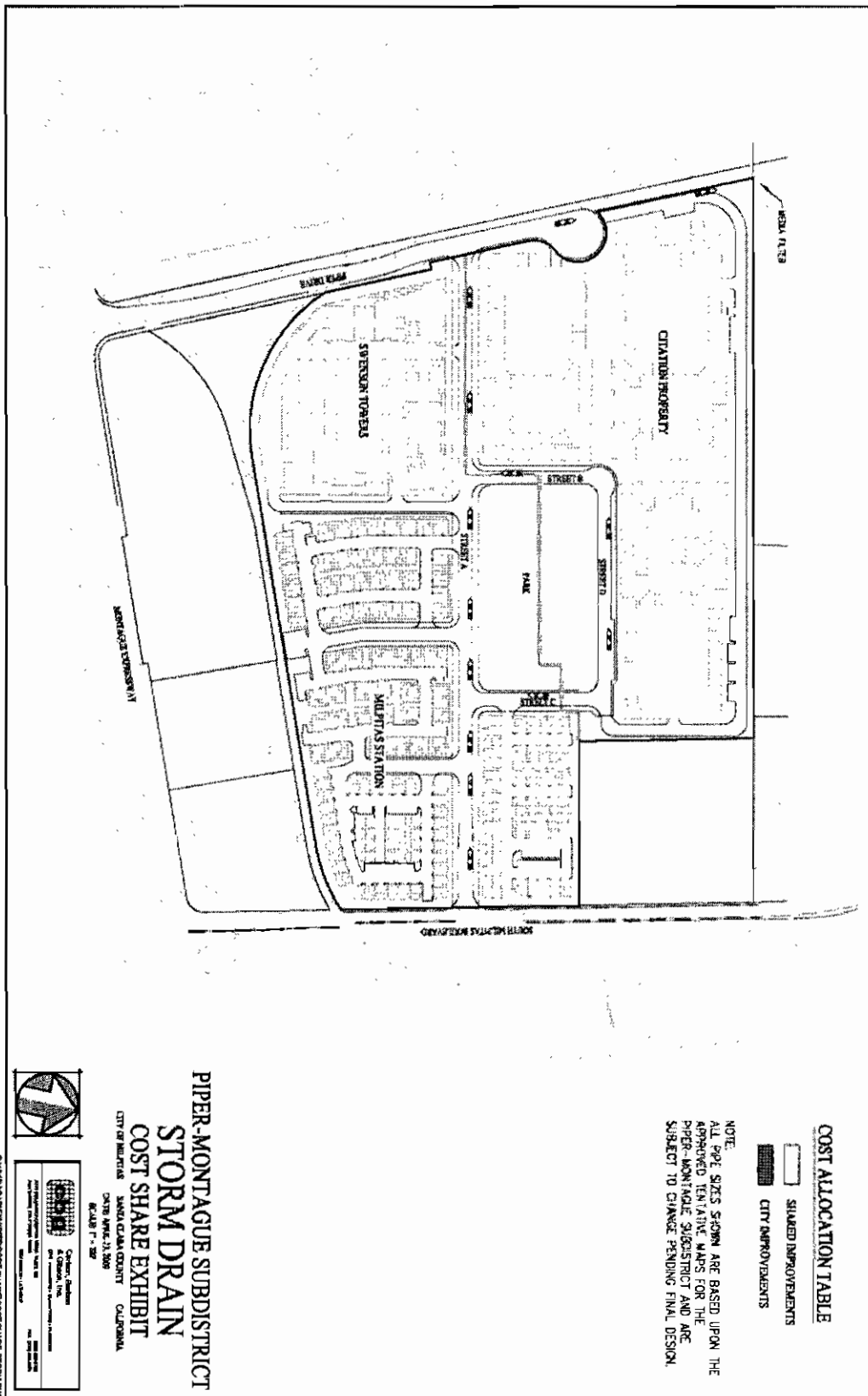
6111 BOLLINGER CANYON ROAD, SUITE 150 • SAN RAMON, CALIFORNIA 94583 • (925) 866-0322 • FAX (925) 866-8575 • www.cbandg.com

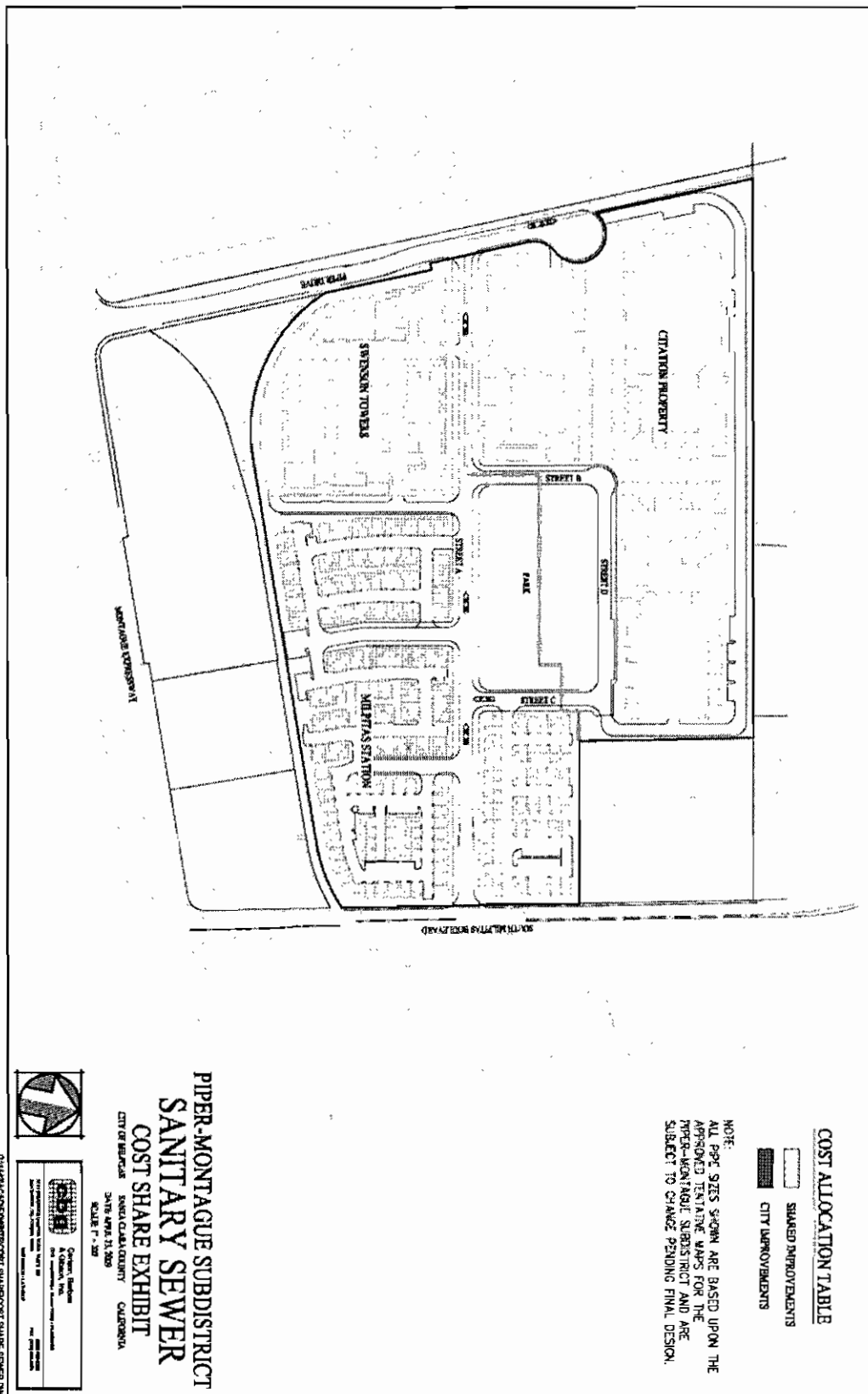
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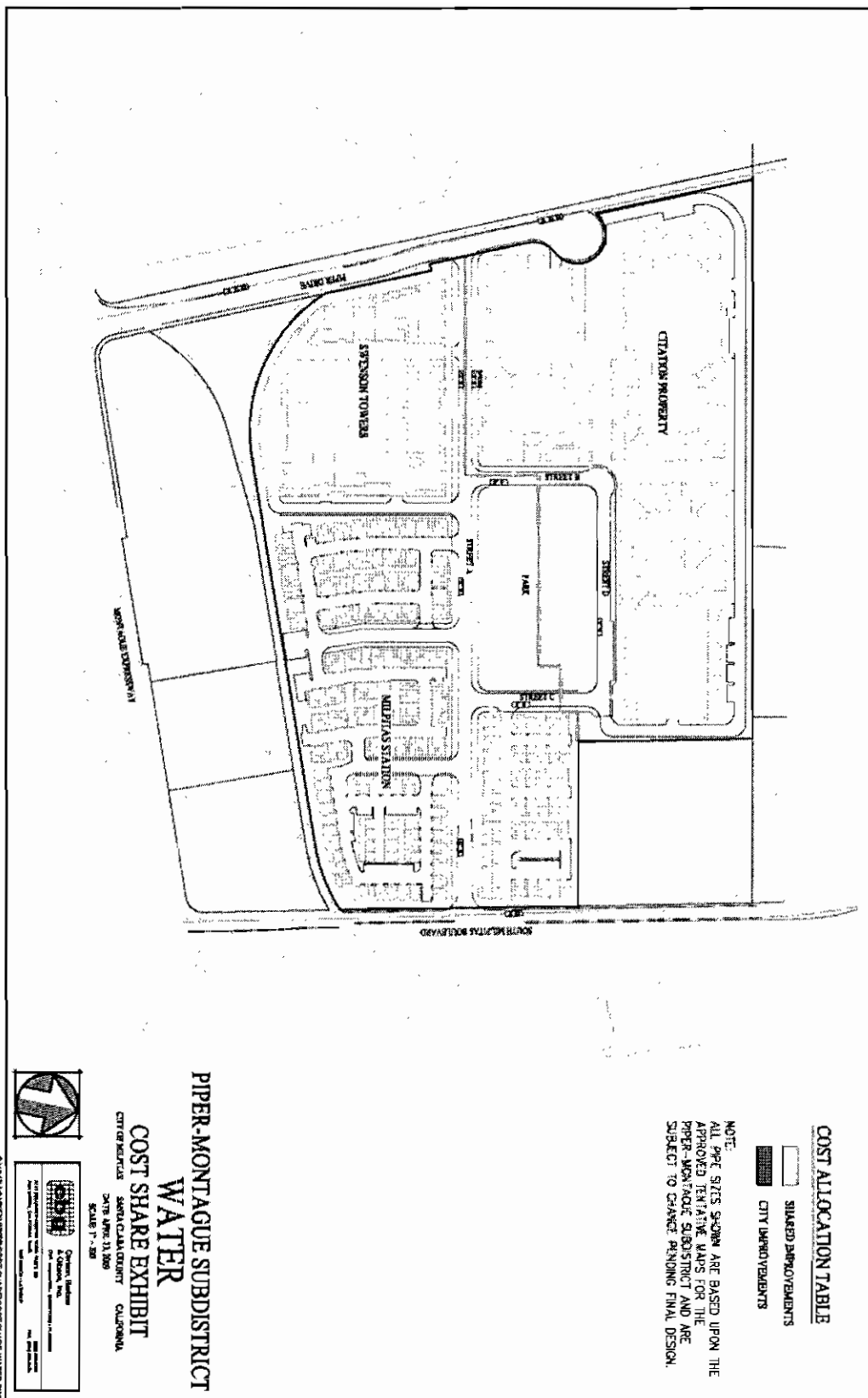
Page 13 of 13

Updated: 7/8/2009









**EXHIBIT G**  
**CITY IMPROVEMENTS**

**[Please see attached.]**

**MILPITAS BOULEVARD  
CITY OF MILPITAS IMPROVEMENTS**

The City of Milpitas will be responsible for all the costs of the following improvements to Milpitas Boulevard:

Construction of the Reclaimed Water line and appurtenances from Gibraltar Drive to Street A including removing and replacing pavement in Milpitas Boulevard.

Construction of Bus Stop improvements on Milpitas Boulevard at the Street A intersection including a concrete pad.

Construction of a raised median from Gibraltar Drive to Montague Expressway

Construction of landscaping and pavement within the Milpitas Boulevard median

Construction of Light Pole Electroliers On Milpitas Boulevard between Gibraltar and Montague Expressway as required

Construction of 2 Speed Feedback signs on the northbound side of Milpitas Boulevard

Construction of frontage improvements adjacent to The PG&E Sub-Station including Curb and Gutter, Sidewalk, and Landscaping.

Slurry Seal resurfacing of Milpitas Boulevard from Gibraltar Drive to Montague Expressway

Signage and Striping for revised lane configuration of Milpitas Boulevard from Gibraltar Drive to Montague Expressway.

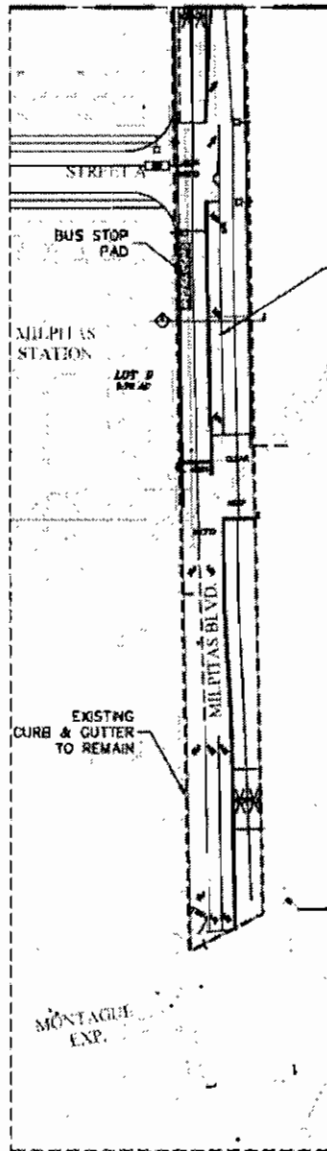
Traffic control and coordination for the construction of all on-street improvements

Plans and Design of all improvements

Field Survey control, Engineering, Geotechnical and other consultant support required to construct all improvements

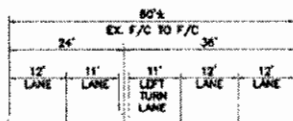
1. SCALE: 1"=40' (PLAN) 1"=10' (SECTION) 2. DATE: 04/21/09 3. DRAWN BY: JIM 4. CHECKED BY: JIM 5. PLOTTED BY: JIM

MATCH LINE  
SEE THIS SHEET BELOW

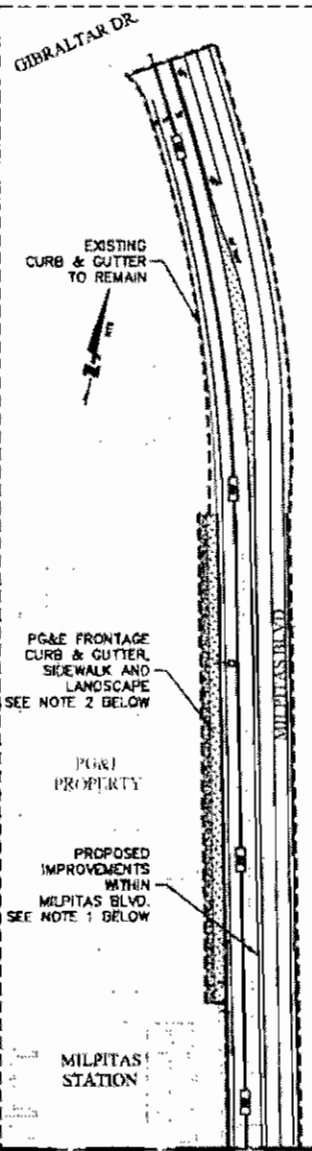


PROPOSED IMPROVEMENTS WITHIN MILPITAS BLVD. SEE NOTE 1 BELOW

- NOTE:
1. SLURRY SEAL, LANDSCAPED MEDIAN, ELECTROLIERS, SPEED FEEDBACK SIGNS, RECLAIMED WATER, BUS STOP, PAVEMENT AND SIGNING/STRIPING
  2. FRONTAGE IMPROVEMENTS INCLUDE CURB & GUTTER, SIDEWALK, LANDSCAPE.



MILPITAS BLVD. TYPICAL CROSS SECTION  
NOT TO SCALE



MATCH LINE  
SEE THIS SHEET ABOVE

LEGEND:

- LANDSCAPE
- CONCRETE SIDEWALK
- SLURRY SEAL
- PAVEMENT MARKINGS

EXHIBIT G



980 9TH ST  
SUITE 1770  
SACRAMENTO, CA 95814  
916-556-5600  
916-556-5899 (FAX)

Subject: MILPITAS BOULEVARD  
CITY OF MILPITAS IMPROVEMENTS  
Job No. 20068010-22  
By RS Date 04/21/09 Chkd. JM  
SHEET 1 OF 1



**Carlson, Barbee  
& Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

ENGINEER'S PRELIMINARY COST ESTIMATE  
SOUTH MILPITAS BOULEVARD  
PIPER / MONTAGUE SUBDISTRICT  
MILPITAS, CALIFORNIA

May 29, 2009  
Job No.: 1543-000

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>STREET WORK</u></b>					
1	Clearing and Grubbing ( <i>Landscape strip and sidewalk</i> )	5,900	SF	\$ 1.00	\$ 5,900.00
2	Remove and Replace Existing Curb and Gutter ( <i>Including subdrain and AB cushion</i> )	400	LF	\$ 20.00	\$ 8,000.00
3	Median Curb ( <i>Including subdrain &amp; AB cushion</i> )	3,100	LF	\$ 15.00	\$ 46,500.00
4	Slurry Seal	101,500	SF	\$ 1.00	\$ 101,500.00
5	Median Island PCC Pavement	5,600	SF	\$ 5.00	\$ 28,000.00
6	Concrete Sidewalk	2,400	SF	\$ 4.00	\$ 9,600.00
7	Bus Pad	600	SF	\$ 15.00	\$ 9,000.00
8	Signing and Striping	1	LS	\$ 20,000.00	\$ 20,000.00
9	Traffic Control	1	LS	\$ 50,000.00	\$ 50,000.00
Subtotal Street Work					\$ 278,500.00
<b><u>RECYCLED WATER</u></b>					
10	10" PVC Recycled Water Line ( <i>Including all appurtenances</i> )	1,150	LF	\$ 100.00	\$ 115,000.00
11	Irrigation Services	1	EA	\$ 750.00	\$ 750.00
12	Connect to Existing	1	EA	\$ 5,000.00	\$ 5,000.00
Subtotal Recycled Water					\$ 120,750.00
<b><u>ELECTRICAL</u></b>					
13	Electroliers	5	EA	\$ 4,000.00	\$ 20,000.00
14	Vehicle Speed Feedback Signs	2	EA	\$ 5,000.00	\$ 10,000.00
Subtotal Electrical					\$ 30,000.00
<b><u>LANDSCAPE</u></b>					
15	Parkway Landscape Strip	3,500	SF	\$ 6.00	\$ 21,000.00
Subtotal Landscape					\$ 21,000.00
SUBTOTAL SOUTH MILPITAS BOULEVARD CONSTRUCTION COST					\$ 450,250.00
15% CONTINGENCY					\$ 67,537.50
TOTAL SOUTH MILPITAS BOULEVARD CONSTRUCTION COST					\$ 517,787.50

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P:\1500- 1599\1543-000\Estimate\Cost\South Milpitas Boulevard 2.xls\S Milpitas Blvd Page 1 of 1

Updated: 5/29/2009

**EXHIBIT H**  
**WORKSHEET EXAMPLE**  
**[Please see attached.]**

City of Milpitas  
Transit Area Specific Plan  
Piper - Montague Subdistrict  
Examples of Calculation of Piper Montague Infrastructure Fee (PMIF) and Related Credits

Assumptions

	Total	Citation	Milpitas Station	Swenson
	100%	44%	26%	30%
Shared Infrastructure Allocation				
Total Estimated Cost of Shared Improvements	\$3,488,625	\$1,534,995	\$907,043	\$1,046,588
Total Approve Units	1437	639	318	480
Piper Montague Infrastructure Fee per Unit (PMIF)	\$2,428	\$2,402	\$2,852	\$2,180

Example 1

Citation is Constructing Owner for Initial Phase and expends \$800,000 and requests building permits for 160 units

Construction cost of \$800,000 would be applied as follows

Credit applied to PMIF	160 units x \$2,402=	\$384,349
Credit applied to TASP Fee	\$800,000-\$384,349	\$215,651
Balance of TASP Fee paid in cash	160 Units X \$23,800=\$3,808,000-\$215,651	\$3,592,349
Total TASP Fee to be paid for 160 units		\$3,808,000

Example 2

Milpitas Station is Constructing Owner for Phase and expends \$1,000,000 and requests building permits for 40 units

Construction cost of \$1,000,000 would be applied as follows

Credit applied to PMIF	40 units x \$2,852=	\$114,093
Credit applied to TASP Fee	\$1,000,000-\$114,093	\$885,907
Balance of TASP Fee paid in cash	40 Units X \$23,800=\$952,000-\$885,907	\$66,093
Total TASP Fee to be paid for 40 units		\$952,000

**Example 3**

Swenson is Constructing Owner for Phase and expends \$450,000 and requests building permits for 240 units

Construction cost of \$450,000 would be applied as follows

Credit applied to PMIF		\$450,000
Balance of PMIF Fee paid in cash	240 units x \$2,180=\$523,200-\$450,000	\$73,200
Credit applied to TASP Fee		\$0
Balance of TASP Fee paid in cash	240 Units X \$23,800=\$5,712,000	\$5,712,000
Total TASP Fee to be paid for 240 units		\$5,712,000

City of Millitas  
Transit Area Specific Plan  
Pipes - Montague Subdistrict  
Examples of Calculation of Pipe Montage Infrastructure Fee (PMIF) given rising costs and Related Credits

Final Estimated Cost Price One	Total	Citizen	Millitas		Overseas
			Suburb	Suburb	
Shared Infrastructure Allocation	100%	44%	44%	30%	30%
Total Estimated Cost of Shared Implementation	\$1,305,526	\$1,474,270	\$521,163	\$1,000,388	
Total Approved Units	432	619	319	489	
Pipe Montage Infrastructure Fee per Unit (PMIF)	\$3,022	\$2,382	\$1,634	\$2,046	

Example 4 Base Building Costs:

Phase One

Client is Constructing Owner for Initial Phase and requires building permits for 320 units

Construction cost of \$2,000,000 would be applied as follows

Total PMIF	639	\$2,307	\$1,474,270	
Credit for Cost Incurred			\$2,000,000	
Credit Applied to Total			-\$1,325,729	-\$1,325,729 City Fee Credit
Balance of PMIF Fee paid in cash	639	22800	\$1,126,775	\$1,042,875
Total PMIF Fee to be paid for 320 units				\$76,200

Phase Two Construction

Shared Infrastructure Allocation	Total	Citizen	Millitas		Overseas
			Suburb	Suburb	
Shared Infrastructure Allocation	100%	44%	44%	30%	30%
Amount Spent Phase One	\$2,000,000	\$1,474,270	\$521,163	\$683,087	
Remaining Amount to Complete	\$1,200,000	\$0	\$423,871	\$886,829	
Total Estimated Cost of Shared Implementation	\$3,200,000	\$1,474,270	\$1,325,329	\$1,769,490	
Total Approved Units	798	0	319	489	
Pipe Montage Infrastructure Fee per remaining unit (PMIF)	\$4,887	\$0	\$1,647	\$3,707	

At 3 construction 1,000,000 for subsequent phase with 300,000 remaining

Total PMIF	318	\$3,542	\$1,115,374	
Credit for Cost Incurred			\$1,000,000	
Balance PMIF paid in cash			\$126,228	\$126,228 City Fee Recovery from MS
Balance of PMIF Fee paid in cash	318	23800	\$7,099,400	
Total PMIF Fee to be paid for 318 units			\$7,164,800	

Remaining Construction remaining 300,000

Total PMIF	480	\$2,707	\$1,296,480	
Credit for Cost Incurred			\$240,000	
Balance PMIF paid in cash			\$1,056,480	\$1,056,480 City Fee Recovery from Overseas
Credit applied to PMIF Fee	0	30	\$0	
Balance of PMIF Fee paid in cash	480	13800	\$6,614,800	
Total PMIF Fee to be paid for 338 units			\$6,614,800	

Not to City

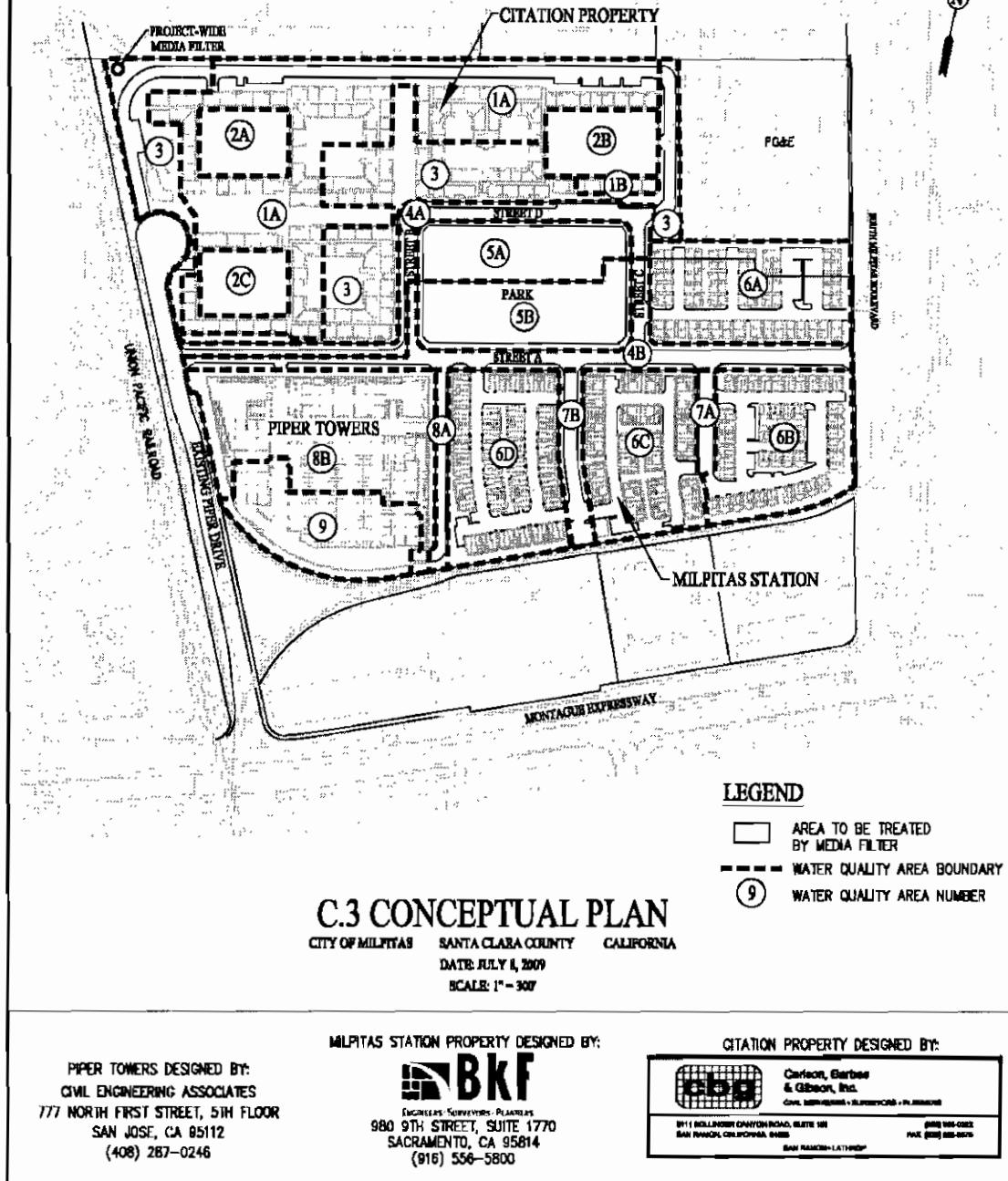
**EXHIBIT I  
CONCEPTUAL PLAN**

**[Please see attached.]**

# EXHIBIT 'I'

SHEET 1 OF 2

NOTE:  
SEE SHEET 2 FOR WATER QUALITY  
TREATMENT SUMMARY BY AREA.



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# EXHIBIT 'I'

SHEET 2 OF 2

## WATER QUALITY TREATMENT SUMMARY

AREA NUMBER		OWNER	USAGE	TREATMENT METHOD	AREA
1	A	CITATION	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	5.8 AC±
	B	CITATION	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	0.2 AC±
2	A	CITATION	PARKING GARAGE	OIL-GREASE SEPARATOR	0.7 AC±
	B	CITATION	PARKING GARAGE	OIL-GREASE SEPARATOR	0.9 AC±
	C	CITATION	PARKING GARAGE	OIL-GREASE SEPARATOR	0.7 AC±
3		CITATION	PRIVATE DEVELOPMENT	MEDIA FILTER	4.7 AC±
4	A	CITY (CITATION)	PUBLIC STREETS	MEDIA FILTER	1.2 AC±
	B	CITY (RCC)	PUBLIC STREETS	MEDIA FILTER	1.8 AC±
5	A	CITY (CITATION)	PUBLIC PARK	ON-SITE TREATMENT	1.4 AC±
	B	CITY (RCC)	PUBLIC PARK	ON-SITE TREATMENT	1.8 AC±
6	A	RCC	PRIVATE DEVELOPMENT	MEDIA FILTER	2.4 AC±
	B	RCC	PRIVATE DEVELOPMENT	MEDIA FILTER	2.3 AC±
	C	RCC	PRIVATE DEVELOPMENT	MEDIA FILTER	2.2 AC±
	D	RCC	PRIVATE DEVELOPMENT	MEDIA FILTER	2.4 AC±
7	A	RCC	PRIVATE STREETS	MEDIA FILTER	0.2 AC±
	B	RCC	PRIVATE STREETS	MEDIA FILTER	0.5 AC±
8	A	SWENSON	PRIVATE STREETS	MEDIA FILTER	0.3 AC±
	B	SWENSON	PRIVATE DEVELOPMENT	MEDIA FILTER	3.3 AC±
9		SWENSON	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	1.7 AC±

TREATMENT METHOD	AREA
VEGETATED TREATMENT	7.7 AC±
OIL-GREASE SEPARATOR	2.3 AC±
MEDIA FILTER	21.3 AC±
ON-SITE TREATMENT (PARK)	3.2 AC±
TOTAL PROJECT AREA	34.5 AC±

NOTE:  
WATER QUALITY TREATMENT AREAS  
CORRELATE WITH THE MAP ON SHEET 1.

PIPER TOWERS DESIGNED BY:  
CIVIL ENGINEERING ASSOCIATES  
777 NORTH FIRST STREET, 5TH FLOOR  
SAN JOSE, CA 95112  
(408) 287-0246

MILPITAS STATION PROPERTY DESIGNED BY:



ENGINEERS - SURVEYORS - PLANNERS  
980 9TH STREET, SUITE 1770  
SACRAMENTO, CA 95814  
(916) 556-5800

CITATION PROPERTY DESIGNED BY:



Carlson, Barbee  
& Gibson, Inc.  
CONS. ENGINEERS - SURVEYORS - PLANNERS

9711 BELLMEAD DRIVE, SUITE 100  
SAN FRANCISCO, CALIFORNIA 94124

(415) 763-0077  
FAX (415) 763-0075

SAN FRANCISCO - LATHROP

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EXHIBIT 'I'

Date Prepared: 7/10/2009

MILPITAS STORMWATER TREATMENT - INCLUDING SWENSON

MEDIA FILTER TREATMENT METHOD-ALTERNATIVE 1

COMMON MEDIA FILTER COST: \$ 303,000 EA

COMMON MEDIA FILTER COST									
AREA NUMBER	OWNER	USAGE	TREATMENT	C-value	AREA (ACRES)	CA	%	PORTION OF MEDIA FILTER COST	
5	A	CITATION	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	0.10	5.80	0.58	3.0%	\$ 875.60
	B	CITATION	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	0.10	0.70	0.42	0.1%	\$ 66.00
	A	CITATION	PARKING GARAGE	ON GRASS SEPARATOR	0.90	0.70	0.43	1.2%	\$ 660.00
	B	CITATION	PARKING GARAGE	ON GRASS SEPARATOR	0.90	0.90	0.90	4.1%	\$ 7,395.00
6	A	CITATION	PARKING GARAGE	ON GRASS SEPARATOR	0.90	0.70	0.43	1.2%	\$ 660.00
	B	CITATION	PARKING GARAGE	ON GRASS SEPARATOR	0.90	0.90	0.90	18.8%	\$ 5,595.00
	A	CITATION	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.72	1.29	0.81	4.7%	\$ 14,313.24
	B	CITATION	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.72	1.80	1.17	4.7%	\$ 20,435.56
7	A	CITY OF MILPITAS	PUBLIC PARK	PARK	0.10	1.80	0.14	0.4%	\$ 1,142.30
	B	CITY OF MILPITAS	PUBLIC PARK	PARK	0.10	1.50	0.14	0.3%	\$ 1,468.80
	A	MILPITAS STATION	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.72	2.30	1.45	9.4%	\$ 18,219.51
	B	MILPITAS STATION	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.72	2.30	1.77	9.8%	\$ 27,103.20
8	A	MILPITAS STATION	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.72	2.20	1.69	8.6%	\$ 25,922.88
	B	MILPITAS STATION	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.72	2.40	1.85	9.4%	\$ 28,279.51
	A	MILPITAS STATION	PRIVATE STREETS	COMMON MEDIA FILTER	0.72	0.20	0.15	0.8%	\$ 2,356.63
	B	MILPITAS STATION	PRIVATE STREETS	COMMON MEDIA FILTER	0.72	0.50	0.39	2.0%	\$ 5,891.56
9	A	SWENSON	PRIVATE STREETS	COMMON MEDIA FILTER	0.90	0.10	0.27	1.4%	\$ 4,131.75
	B	SWENSON	PRIVATE DEVELOPMENT	COMMON MEDIA FILTER	0.80	3.35	2.71	13.8%	\$ 41,524.05
	A	SWENSON	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	0.10	1.74	0.17	0.9%	\$ 2,662.58
	B	SWENSON	PRIVATE DEVELOPMENT	VEGETATED TREATMENT	0.10	1.74	0.17	0.9%	\$ 2,662.58
					TOTAL AREA	34.57	CA TOTAL	19.60	TOTAL COST: \$ 300,000.00

USING C = 0.1  
(FOR CALCULATING FLOW FROM ANY PROPERTY THAT USES TREATMENT OTHER THAN COMMON MEDIA FILTER)

Milpitas Station retains Option Parcel A

MILPITAS STATION TOTAL:	\$ 147,581.13	49.19%
CITATION TOTAL:	\$ 94,800.83	31.60%
SWENSON TOTAL:	\$ 18,968.84	6.19%
CITY OF MILPITAS TOTAL:	\$ 4,580.83	1.53%
SHARED COST:	\$ 34,458.77	11.49%
MILPITAS STATION 20%	\$ 8,919.28	
CITATION 44%	\$ 15,167.86	
SWENSON 30%	\$ 20,317.63	

%

MILPITAS STATION TOTAL:	\$ 137,843.29	39.27%
CITATION TOTAL:	\$ 94,800.83	31.60%
SWENSON TOTAL:	\$ 40,318.48	16.11%
CITY OF MILPITAS TOTAL:	\$ 4,580.83	1.53%
SHARED COST:	\$ 34,458.77	11.49%
MILPITAS STATION 20%	\$ 8,919.28	
CITATION 44%	\$ 15,167.86	
SWENSON 30%	\$ 20,317.63	



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Review the FY 2019-20 Quarterly Financial Status Report for the Quarter Ending September 30, 2019</b>
<b>Category:</b>	Consent Calendar-Leadership and Support Services
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Walter C. Rossmann, Finance Director, 408-586-3111
<b><u>Recommendation:</u></b>	Review the FY 2019-20 Quarterly Financial Status Report for the Quarter Ending September 30, 2019

### **Background:**

On June 11, 2019, the City Council approved the Fiscal Year (FY) 2019-20 Adopted Operating Budget in the amount of \$247.9 million and the General Fund Budget in the amount of \$121.6 million. After adoption of the budget, staff monitors and tracks revenues and expenditures for all funds within an emphasis on the General Fund and Enterprise Funds.

This staff report provides a quarterly update on budget versus actual expenditures and revenues of the General, Water and Sewer Funds, the City's major operating funds, based on unaudited financial reports for FY 2019-20 as of September 30, 2019.

On October 25, staff sent a draft version of this report to the Finance Subcommittee for review and let the Subcommittee know that the final version of the report will be agendaized on the consent calendar for the Nov. 19, 2019 City Council meeting.

### **Analysis:**

The summary information below as well as the attachments comprise the FY 2019-20 Quarterly Financial Status Report for the Quarter ending September 30, 2019 for the General Fund and Enterprise Funds. Major revenue sources and expenditures for these funds are discussed below. The attachments provide a variance analysis of budget versus actual expenditures and revenues for the first quarter of FY 2019-20 as well as prior year actual expenditures and revenues for the first quarter of FY 2018-19 for comparison purposes.

### **General Fund**

On June 11, 2019, the City Council approved the Fiscal Year (FY) 2019-20 Adopted Operating General Fund Budget in the amount of \$121.6 million. The budget comprised of \$118.8 million of ongoing revenues offsetting ongoing expenditures of \$115.6 million and the use of unassigned reserves in the amount of \$6 million for one-time transfers-out in the amount of \$6.0 million to the General Government Capital Improvement Fund (\$4 million) and Affordable Housing and Community Benefit Fund (\$2 million). The higher ongoing estimated revenues resulted in an ongoing net operating surplus of approximately \$3.2 million.

### **Revenues**

For the three months ending September 30, 2019, the General Fund has received \$10.4 million, or 8.8%, of the FY 19-20 amended operating budget of \$118.8 million. The amended budget is comprised of \$118.8 million of the adopted budget and a budget amendment of \$34,200. An update on major revenue sources is provided below.

- Property Taxes and Redevelopment Property Tax Trust Fund: For the three months ending September 30, 2019, \$76,000, or 0.3%, of the \$34.8 million budget has been received. Most property tax revenue is received in the second half of the fiscal year, so it is normal to see low revenues for the first quarter. Revenues are 18% less than last year at the same time which is due to receiving less Supplemental Taxes in the current year as projected by the County and included in the City's revenue estimate for the current year. Current revenue projections from the County of Santa Clara estimate \$35.5 million in total revenue for the City, which would be \$0.7 million, or 2%, above budgeted revenues.
- Sales & Use Tax: For the three months ending September 30, 2019, \$2.2 million, or 8.2%, of the \$27.2 million budget has been received. Revenues are 48% less than last year at the same time which is due to a change in the timing of payments received by the California Department of Tax and Fee Administration (CDTFA). The CDTFA shortened its clean-up payment from 3 months after a quarter end to 2 months after a quarter end resulting in a shift of sales tax receipts by one month of sales tax revenue this year compared to last year. Staff will monitor this revenue source and may bring adjustments to the budgeted estimates as part of the mid-year budget review.
- Franchise Fees: For the three months ending September 30, 2019, \$0.5 million, or 10.8%, of the \$4.9 million budget has been received. Revenues are 128% higher than last year at the same time which is due to the timing of payments received.
- Hotel/Motel (TOT) Tax: For the three months ending September 30, 2019, \$2.4 million, or 12.5%, of the \$19.6 million budget has been received. Revenues are 25% higher than last year at the same time which is due to the increase in the TOT rate to 14% approved by the Council on 11/20/18. However, revenues for TOT are trending slightly below budgeted estimates due to a reduction of activity at hotels. Staff will monitor this revenue source and may bring adjustments to the budgeted estimates as part of the mid-year budget review.
- License and Permits: For the three months ending September 30, 2019, \$1.6 million, or 11.0%, of the \$15.2 million budget has been received. Revenues are 52% less than last year at the same time which is due to the receipt of payment in September of last year for a building permit related to a large development. Staff will monitor this revenue source and may bring adjustments to the budgeted estimates as part of the mid-year budget review.
- Charges for Services: For the three months ending September 30, 2019, \$1.5 million, or 22.2%, of the \$7.3 million budget has been received. Revenues are 8% higher than last year due to increased Planning revenue as well as an increase of reimbursements for overhead and labor associated with billable staff time. Revenue received for the first quarter, as projected, is on track to meet the budgeted estimate.

### Expenditures

For the three months ending September 30, 2019, the General Fund has utilized \$39.2 million, or 31.6%, of the FY 19-20 amended operating budget of \$124.4 million. The amended budget is comprised of \$121.6 million of the adopted budget, \$2.7 million of carryover encumbrances from the previous fiscal year for goods and services as well as approximately 150,000 of increased department appropriations as approved by Council during the first quarter of the fiscal year. At the end of the first quarter, total expenditures plus encumbrances are above the par of 25% by 6.6 percentage points, or \$8.1 million, primarily due to purchases of goods and contractual services related to carryover encumbrances, along with \$6.8 million completed transfers-out to the General Government Capital Improvement Fund (\$4 million), Affordable Housing and Community Benefit Fund (\$2 million), the Storm Drain Capital Improvement Fund (\$500,000), the Equipment Fund for information technology equipment replacement (\$300,000), and the Council approved Utility Rate Assistance Program (\$100,000). Regardless, staff will monitor expenditures to ensure that departments will not exceed their appropriations.

### ***Water Maintenance & Operation (M&O) Fund Financial Status***

Revenues: For the three months ending September 30, 2019, \$9.5 million of charges for services, or 28.3%, of the \$33.6 million budgeted has been received. Total revenue received amounts to \$9.6 million, or 27.9%, of the \$34.3 million budgeted.

Expenditures: For the three months ending September 30, 2019, \$6.7 million, or 23.0%, of the \$29.2 million amended budgeted has been spent.

### ***Sewer Maintenance & Operation (M&O) Fund Financial Status***

Revenues: For the three months ending September 30, 2019, \$4.6 million of charges for services, or 24.3%, of the \$19.1 million budgeted has been received. Total revenue received amounts to \$4.7 million, or 23.7%, of the \$19.7 million budgeted.

Expenditures: For the three months ending September 30, 2019, \$3.8 million, or 25.5%, of the \$14.8 million amended budgeted has been spent.

### **Fiscal Impact:**

There is no fiscal impact from this report; it is intended to provide an update of the City's financials comparing budget versus actual expenditures and revenues for the first quarter of FY 2019-20 as well as comparing prior year actual expenditures and revenues for the first quarter of FY 2019-20.

### **California Environmental Quality Act:**

N/a

### **Recommendation:**

Review the FY 2019-20 Quarterly Financial Status Report for the Quarter Ending September 30, 2019

### **Attachments:**

1. FY 2019-2020 Revenue Report for Fiscal Year-To-Date September 30, 2019
2. FY 2019-2020 General Fund Expenditures by Department September 30, 2019
3. FY 2019-2020 Water and Sewer Funds Financial Status for Fiscal Year-To-Date September 30, 2019

**CITY OF MILPITAS**  
**General Fund Revenues**  
**For Fiscal Year-To-Date September 30, 2019**

<b>General Fund Revenues</b>	<b>FY 2019-20 Adopted Budget</b>	<b>FY 2019-20 Mid-Year Changes</b>	<b>FY 2019-20 Amended Budget</b>	<b>FY 2019-20 Revenue As of 9/30/2019</b>	<b>FY 2019-20 Percent of Amended Budget</b>	<b>FY 2018-19 Revenue As of 09/30/2018</b>	<b>Percent Inc (dec) FY20/FY19</b>
Property Taxes	\$ 28,391,781	\$ -	\$ 28,391,781	\$ 76,411	0.27%	\$ 93,650	-18.41%
Redevelopment Property Tax Trust							
Fund Distributions	6,414,919	-	6,414,919	-	0.00%	-	0.00%
Sales and Use Taxes *	27,200,042	-	27,200,042	2,223,374	8.17%	4,314,869	-48.47%
Other Taxes	1,128,000	-	1,128,000	238,358	21.13%	165,048	44.42%
Franchise Fees	4,937,000	-	4,937,000	532,868	10.79%	233,541	128.17%
Hotel/Motel Tax	19,557,639	-	19,557,639	2,442,736	12.49%	1,960,366	24.61%
License & Permits	14,748,486	-	14,748,486	1,615,454	10.95%	3,338,776	-51.62%
Fines and Forfeitures	501,810	-	501,810	66,007	13.15%	86,346	-23.56%
Interest Income	1,267,000	-	1,267,000	399,428	31.53%	249,186	60.29%
Intergovernmental	1,445,927	34,200	1,480,127	75,294	5.09%	100,577	-25.14%
Charges for Services	6,960,914	-	6,960,914	1,542,147	22.15%	1,413,308	9.12%
Other Revenue Sources	241,000	-	241,000	119,035	49.39%	84,441	40.97%
Operating Transfers In	5,993,002	-	6,019,566	1,104,148	18.34%	-	0.00%
<b>Total General Fund Revenue</b>	<b>\$118,787,520</b>	<b>\$34,200</b>	<b>\$118,848,284</b>	<b>\$10,435,260</b>	<b>8.78%</b>	<b>\$12,040,107</b>	<b>-13.33%</b>

\* The California Department of Tax and Fee Administration shortened its clean-up payment from 3 months after a quarter end to 2 months after a quarter end resulting in a shift of sales tax receipts by one month of sales tax revenue this year compared to last year.

**City of Milpitas**  
**General Fund Expenditures by Department**  
**For Fiscal Year-To-Date September 30, 2019**

Percent of Year	25%							
Department/Division	FY 2019-20 Adopted Budget	FY 2019-20 Mid-Year Appropriation	FY 2019-20 Carryover Encumbrances	FY 2019-20 Amended Budget	FY 2019-20 As of 09/30/2019 Exp. incl. Encumbr.	FY 2019-20 Percent of Amended Budget	FY 2018-19 As of 9/30/2018 Exp. incl. Encumbr.	Percent Exp & Enc Inc (dec) FY20/FY19
City Council	587,319		-	587,319	103,824	17.68%	606,533	-82.88% (a)
City Manager	2,332,184		21,719	2,353,903	470,642	19.99%	556,698	-15.46%
City Clerk	626,844		-	626,844	147,855	23.59%	143,521	3.02%
Economic Development	939,806		185,157	1,124,963	336,851	29.94% (f)	204,301	64.88%
Policy Planning	4,486,153	-	206,876	4,693,029	1,059,172	22.57%	1,511,053	-29.91%
Building, Safety & Housing	6,693,391		85,560	6,778,951	1,781,727	26.28% (f)	1,241,648	43.50%
City Attorney	1,190,364		-	1,190,364	1,055,243	88.65% (b)	874,468	20.67%
Finance	4,367,077		193,342	4,560,419	1,297,955	28.46% (f)	951,158	36.46%
Public Works	9,258,950		339,768	9,598,718	3,115,506	32.46% (f)	2,225,282	40.00%
Engineering	3,998,574		110,002	4,108,576	1,009,133	24.56%	1,227,263	-17.77%
Planning	1,920,315		78,130	1,998,445	540,018	27.02% (f)	405,614	33.14%
Police	36,375,936	34,200	383,975	36,794,111	8,702,291	23.65%	7,449,212	16.82%
Fire	26,640,966	120,082	212,383	26,973,431	6,432,969	23.85%	5,582,539	15.23%
Information Technology	3,549,603		253,780	3,803,383	979,656	25.76% (f)	855,005	14.58%
Human Resources	2,045,669		85,704	2,131,373	587,917	27.58% (f)	367,971	59.77%
Recreation & Comm Serv.	6,463,227		209,600	6,672,827	2,111,490	31.64% (c) & (f)	1,789,419	18.00%
Non-Departmental	7,780,761		509,333	8,290,094	3,768,430	45.46% (d) & (f)	2,735,410	37.76% (a)
Transfers Out	6,800,000			6,800,000	6,800,000	100.00% (e)	13,908,102	48.89%
<b>Total</b>	<b>121,570,986</b>	<b>154,282</b>	<b>2,668,453</b>	<b>124,393,721</b>	<b>39,241,507</b>	<b>31.55%</b>	<b>27,216,042</b>	<b>44.19%</b>

(a) Funding for the County Library was moved from the City Council to the Non-Departmental budget in F19-20.

(b) Annual contract expenditures for Best, Best, and Krieger.

(c) Seasonal contractual services expenditures.

(d) Memorandum of Understanding contractual payments, vehicle lease purchase start-up costs, PLAN JPA attorney fees, and insurance premium paid in the first quarter.

(e) Transfers Out - General Government CIP Fund (\$4 million), Affordable Housing and Community Benefit Fund (\$2 million), Equipment Fund (\$300,000), Rate Assistance Program (\$100,000), and Storm Drain CIP Fund (\$500,000).

(f) Percent of budget greater than 25% for 1st quarter due primarily to prior year encumbrances.

**City of Milpitas**  
**Water and Sewer Financial Status**  
**For Fiscal Year-To-Date September 30, 2019**

Percent of Year	25%							
Water Fund	FY 2019-20 Adopted Budget	FY 2019-20 Mid-Year Appropriation	FY 2019-20 Carryover Encumbrances	FY 2019-20 Amended Budget	FY 2019-20 As of 9/30/2019 Expenditures	FY 2019-20 Percent of Amended Budget	FY 2018-19 As of 9/30/2018 Expenditures	Percent Exp Inc (dec) FY20/FY19
<b>Revenue:</b>								
Revenue from Investments	516,000			516,000	19,321	3.74%	11,646	65.90%
Charges for Services	33,629,267			33,629,267	9,530,903	28.34%	8,284,404	15.05%
Miscellaneous Revenue	130,000			130,000	6,510	5.01%	9,225	-29.43%
Operating Transfer In	3,089			3,089	3,089	100.00%	13,444	-77.02%
<b>Total Water Fund Revenue</b>	<b>34,278,356</b>	<b>0</b>	<b>0</b>	<b>34,278,356</b>	<b>9,559,823</b>	<b>27.89%</b>	<b>8,318,719</b>	<b>14.92%</b>

<b>Expenses:</b>								
Personnel Services	4,027,954			4,027,954	1,041,360	25.85%	836,015	24.56%
Services and Supplies	2,654,897		276,746	2,931,643	928,660	31.68%	661,804	40.32%
Wholesale Water Purchase	18,860,000			18,860,000	3,515,661	18.64%	3,615,140	-2.75%
Debt Service	225,225			225,225	0	0.00%	-	0.00%
Capital Outlay	110,000		318,274	428,274	539,491	125.97%	7,664	6939.29%
Operating Transfer Out	2,741,851			2,741,851	685,463	25.00%	676,471	1.33%
<b>Total Water Fund Expenses</b>	<b>28,619,927</b>	<b>0</b>	<b>595,020</b>	<b>29,214,947</b>	<b>6,710,635</b>	<b>22.97%</b>	<b>5,797,094</b>	<b>15.76%</b>

Percent of Year	25%							
Sewer Fund	FY 2019-20 Adopted Budget	FY 2019-20 Mid-Year Appropriation	FY 2019-20 Carryover Encumbrances	FY 2019-20 Amended Budget	FY 2019-20 As of 9/30/2019 Expenditures	FY 2019-20 Percent of Amended Budget	FY 2018-19 As of 9/30/2018 Expenditures	Percent Exp Inc (dec) FY20/FY19
<b>Revenue:</b>								
Revenue from Investments	375,000			375,000	6,110	1.63%	6,373	-4.13%
Charges for Services	19,132,127			19,132,127	4,643,846	24.27%	4,213,091	10.22%
Miscellaneous Revenue	60,000			60,000	-8,428	-14.05%	-	0.00%
Operating Transfer In	119,878			119,878	19,878	16.58%	13,444	47.86%
<b>Total Sewer Fund Revenue</b>	<b>19,687,005</b>	<b>0</b>	<b>0</b>	<b>19,687,005</b>	<b>4,661,406</b>	<b>23.68%</b>	<b>4,232,908</b>	<b>10.12%</b>

<b>Expenses:</b>								
Personnel Services	3,069,935			3,069,935	594,576	19.37%	665,006	-10.59%
Services and Supplies	1,550,907		476,408	2,027,315	1,012,874	49.96%	520,279	94.68%
Treatment Plant	7,045,200			7,045,200	1,723,365	24.46%	1,451,842	18.70%
Debt Service	1,033,038			1,033,038	0	0.00%	-	0.00%
Capital Outlay	47,292			47,292	47,292	100.00%	-	0.00%
Operating Transfer Out	1,568,485			1,568,485	392,121	25.00%	414,819	94.53%
<b>Total Sewer Fund Expenses</b>	<b>14,314,857</b>	<b>0</b>	<b>476,408</b>	<b>14,791,265</b>	<b>3,770,228</b>	<b>25.49%</b>	<b>3,051,946</b>	<b>23.54%</b>



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	Accept Additional FY 2019 Citizen Options for Public Safety (COPS) Grant funding and related Budget Amendment
<b>Category:</b>	Consent Calendar-Public Safety
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Captain Jared Hernandez, 408-586-2406
<b>Recommendation:</b>	Accept the Additional FY 2019 COPS Grant Funding in the Amount of \$63,658.27, Approve the Addition to the Spending Plan, and Approve a Budget Amendment

### **Background:**

In November of 2018, the California State Legislature, through the Citizen Options for Public Safety (COPS) grant program, awarded \$113,782.00 to the City of Milpitas. On April 2, 2019, the City Council approved the Chief of Police's spending plan for:

1. Polygraph Examiner
2. Firearms Program Equipment and Training Equipment
3. Surveillance Equipment
4. Pursuit Prevention Equipment
5. Evidence Collection and Processing Equipment
6. Canine Training and Equipment

The approved 2019 Citizen Options for Public Safety (COPS) Grant spending plan is attached. The Milpitas Police Department received an additional \$63,658.27 for the FY 2019 COPS grant. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services.

### **Analysis:**

California Government Code section 30061 specifies that the City Council shall appropriate these funds exclusively for front line law enforcement services and in accordance with written requests submitted by the Chief of Police. The City of Milpitas is not required to provide matching funds. The Milpitas Police Department has identified additional training and equipment that can be purchased with this additional funding. The Milpitas Police Department will utilize the additional funding within the scope of the previously approved spending plan as well as an additional seventh category to replace aging protective equipment such as protective helmets, ballistic shields, and tactical entry equipment.

7. Protective Equipment

### **Policy Alternative(s):**

**Alternative 1:** Refuse the additional funding and modified spending plan for the 2019 Citizen Options for Public Safety (COPS) Grant.

Pros: None

Cons: Needed equipment could not be purchased without a fiscal impact to the operating budget.

Reason not recommended: Refusing the funding would delay the purchase of the needed equipment

**Fiscal Impact:**

There are no negative fiscal impacts with the additional funding allocated to 2019 COPS. A budget amendment to appropriate \$63,658.27 to the Police Department's FY 19-20 Operating Budget is recommended for the purchase of a polygraph examiner (\$6,458.27), firearms equipment (\$15,700), surveillance equipment (\$21,500), and protective equipment (\$20,000).

**California Environmental Quality Act:** N/A

**Recommendation:**

1. Accept the additional \$63,658.27 FY 2019 COPS grant funding to be spent in accordance with the recommended spending plan.
2. Approve the amended spending plan to include a category for Protective Equipment.
3. Approve a budget appropriation for \$63,658.27 in to the Milpitas Police Department's FY 19-20 operating budget.

**Attachment(s):**

- a) Approved 2019 Citizen Options for Public Safety (COPS) Grant spending plan.
- b) Budget Change Form

# MEMORANDUM

Milpitas Police Department



**DATE:** October 24, 2019

**TO:** Honorable Mayor and City Council

**THROUGH:** Steve McHarris, Interim City Manager

**FROM:** Armando Corpuz, Chief of Police

**SUBJECT:** **FY 2019 Citizen Options for Public Safety (COPS) Grant**

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The City of Milpitas received COPS funds from the state pursuant to Government Code 30061-30063, in the amount of \$113,782.00. These funds must be used to support front line law enforcement services and must supplement and not supplant existing funding for front line law enforcement services. No City matching funds are required.

California Government Code section 30061 specifies city council shall appropriate these funds exclusively for front line law enforcement services and in accordance with written requests submitted by the Chief of Police.

On April 2, 2019, Council approved the planned expenditures in the following categories for the Fiscal Year 2019 COPS Grant:

1. **Polygraph Examiner**
2. **Firearms Program Equipment**
3. **Surveillance Equipment**
4. **Pursuit Prevention Equipment**
5. **Evidence Collection and Processing Equipment**
6. **Canine Training and Equipment**

The City of Milpitas received an additional \$63,658.27 in the FY2019 COPS Grant and has identified additional training and equipment to purchase within the scope of the previously approved spending plan (see the approved 2019 Citizen Options for Public Safety (COPS) Grant spending plan). Additional needs exclusive from the approved planned expenditures were also identified in a seventh category to replace aging protective equipment such as protective helmets, ballistic shields, and tactical/entry equipment.

Further specifics on the seventh category is as follows:

## **7. Protective Equipment**

Officers utilize various types of protective equipment including but not limited to ballistic vests, helmets, and shields. Additionally, the Milpitas Police Department occasionally uses tactical/entry equipment to conduct searches and rescue operations. Existing equipment is aging and needs to be replaced.

### **RECOMMENDATION:**

Accept the additional \$63,658.27 FY 2019 COPS grant funding and approve the amended spending plan.

# MEMORANDUM

Milpitas Police Department



**DATE:** February 28, 2019

**TO:** Honorable Mayor and City Council

**THROUGH:** Julie Edmonds-Mares, City Manager

**FROM:** Armando Corpuz, Chief of Police

**SUBJECT:** **FY 2019 Citizen Options for Public Safety (COPS) Grant**

The City of Milpitas anticipates receiving COPS funds from the state pursuant to Government Code 30061-30063, in the amount of \$113,782.00. These funds must be used to support front line law enforcement services and must supplement and not supplant existing funding for front line law enforcement services. No City matching funds are required.

These funds must be appropriated pursuant to written request from the Chief of Police of the law enforcement agency that provides police services for the City. The request must specify the front line law enforcement needs of the requesting entity.

Below are the planned expenditures for the Fiscal Year 2019 COPS Grant, including tax and shipping, as applicable:

1.	<b>Polygraph Examiner</b>	<b>\$30,260</b>
2.	<b>Firearms Program Equipment</b>	<b>\$34,000</b>
3.	<b>Surveillance Equipment</b>	<b>\$27,500</b>
4.	<b>Pursuit Prevention Equipment</b>	<b>\$3,022</b>
5.	<b>Evidence Collection and Processing Equipment</b>	<b>\$9,500</b>
6.	<b>Canine Training and Equipment</b>	<b>\$9,500</b>
<b>Total:</b>		<b>\$113,782</b>

Further specifics on these spending areas are as follows:

**1. Polygraph Examiner (\$30,260):**

The police department utilizes a polygraph exam as a valuable tool in criminal investigations and police applicant investigations. The Police Department has two vacant polygraph examiner positions. The extensive certified training expense for a polygraph examiner is approximately \$15,130.00, per student.

**2. Firearms Program Equipment and Training Equipment (\$34,000):**

The purchase of handguns, rifles, less-lethal devices, less-lethal ammunition, firearm accessories, and training equipment will maintain the firearm program inventory and ensure proper training in the use of the equipment and use of force options. The police department has several new officers and equipment inventory is diminishing. The additional equipment will help ensure all sworn personnel are properly equipped and are provided necessary training.

**3. Surveillance Equipment (\$27,500)**

The Police Department deploys surveillance equipment in order to apprehend criminals and further criminal investigations. The police department intends to purchase surveillance camera systems, camera system accessories and binoculars. The technology enhances officer and community safety while reducing personnel deployment and costs.

**4. Pursuit Prevention Equipment (\$3,022)**

Vehicle pursuits expose the police department and city to potential civil liability and place the public at risk. The Milpitas Police Department currently employs equipment and technology to minimize, intervene, and prevent vehicle pursuits. Additional equipment and replacement equipment is necessary to continue our efforts in mitigating vehicle pursuits.

**5. Evidence Collection and Processing Equipment (\$9,500)**

The Milpitas Police Department has a specialized evidence collection team that documents, processes, and responds to major crime scenes. All major crime scenes must be memorialized with photographs and/or video before and during an investigation. The police department needs to replace camera equipment, camera accessories, and purchase a processing workstation.

**6. Canine Training and Equipment (\$9,500)**

Police canines are used for suspect tracking, building searches, searching for missing persons, and narcotic detection. Police canines will, at times, operate beyond the physical view of the handler. New camera technology allows the canine to wear a remote camera that can be viewed remotely by the canine handler. The police department would like to purchase such technology and training to enhance safety and document canine activity.

**RECOMMENDATION:**

Approve the 2019 COPS Grant spending plan.



**City of Milpitas, California**

**BUDGET CHANGE FORM**

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	261-3567	\$63,658.27	261-721-4503	\$6,458.27
<input checked="" type="checkbox"/> Budget Appropriation			261-721-4223	\$15,700.00
<input type="checkbox"/> Budget Transfer			261-721-4223	\$21,500.00
			261-721-4223	\$20,000.00

Accept the Additional FY 2019 COPS Grant Funding in the Amount of \$63,658.27, Approve the Addition to the Spending Plan, and Approve a Budget Amendment.

**Background:**

In November of 2018, the California State Legislature, through the Citizen Options for Public Safety (COPS) grant program, awarded \$113,782.00 to the City of Milpitas. On April 2, 2019, the City Council approved the Chief of Police's spending plan for:

1. Polygraph Examiner
2. Firearms Program Equipment and Training Equipment
3. Surveillance Equipment
4. Pursuit Prevention Equipment
5. Evidence Collection and Processing Equipment
6. Canine Training and Equipment

The approved 2019 Citizen Options for Public Safety (COPS) Grant spending plan is attached. The Milpitas Police Department received an additional \$63,658.27 for the FY 2019 COPS grant. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services.

**Analysis:**

California Government Code section 30061 specifies that the City Council shall appropriate these funds exclusively for front line law enforcement services and in accordance with written requests submitted by the Chief of Police. The City of Milpitas is not required to provide matching funds. The Milpitas Police Department has identified additional training and equipment that can be purchased with this additional funding. The Milpitas Police Department will utilize the additional funding within the scope of the previously approved spending plan as well as an additional seventh category to replace aging protective equipment such as protective helmets, ballistic shields, and tactical entry equipment.

7. Protective Equipment

**Policy Alternative(s):**

**Alternative 1:** Refuse the additional funding and modified spending plan for the 2019 Citizen Options for Public Safety (COPS) Grant.

Pros: None

Cons: Needed equipment could not be purchased without a fiscal impact to the operating budget.

Reason not recommended: Refusing the funding would delay the purchase of the needed equipment

**Fiscal Impact:**

There are no negative fiscal impacts with the additional funding allocated to 2019 COPS. A budget amendment to appropriate \$63,658.27 to the Police Department's FY 19-20 Operating Budget is recommended for the purchase of a polygraph examiner (\$6,458.27), firearms equipment (\$15,700), surveillance equipment (\$21,500), and protective equipment (\$20,000).

**California Environmental Quality Act:** N/A

**Recommendation:**

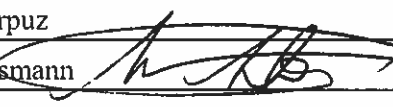
1. Accept the additional \$63,658.27 FY 2019 COPS grant funding to be spent in accordance with the recommended spending plan.
2. Approve the amended spending plan to include a category for Protective Equipment.
3. Approve a budget appropriation for \$63,658.27 in to the Milpitas Police Department's FY 19-20 operating budget.

**Attachment(s):**

- a) Approved 2019 Citizen Options for Public Safety (COPS) Grant spending plan.
- b) Budget Change Form

☒ **Check if City Council Approval required.**

**Meeting Date:** November 19, 2019

<b>Requested by:</b>	<b>Department Head:</b> Armando Corpuz	<b>Date:</b> November 19, 2019
<b>Reviewed by:</b>	<b>Finance Director:</b> Walter C. Rossmann 	<b>Date:</b> November 19, 2019
<b>Date approved by City Council, if required:</b>		<b>Confirmed by:</b>

FI/24786/V

Form 30-222 (Rev. 1/92)



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Consider Two Fee Waivers Requested by Kiwanis Club of Milpitas and Pragnya non-profit for a Total of \$2,200 (Staff Contact: Mary Lavelle, 408-586-3001)</b>
<b>Category:</b>	Consent Calendar-Leadership and Support Services
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Mary Lavelle, City Clerk, 408-586-3001
<b>Recommendation:</b>	Per request forms received by the City Clerk, move to waive the fees to rent the Milpitas Community Center Auditorium for the Kiwanis Club of Milpitas (\$1,200) and for the non-profit organization Pragnya (\$1,000).

### **Background**

On October 31 and November 1, 2019, the City Clerk received "Donation or Fee Waiver/Reduction Request Application Forms" from (1) Kiwanis Club of Milpitas and (2) Pragnya non-profit organization respectively.

Kiwanis requests the City Council to waive the fee for renting the Community Center Auditorium on February 7, 2020 for its annual Crabfeed to benefit Milpitas Youth. Kiwanis requests the City Council to waive \$1,200 rental fee for the facility.

Pragnya is a Milpitas health-oriented organization that works in bringing together neurodiverse individuals and neurotypical society to acculturate to each other, communicate and support each other, especially including those with developmental disabilities and their families. It will host a "Health 360" symposium at the Milpitas Community Center Auditorium on November 10, 2019. Pragnya requests the City Council to retroactively waive the \$1,000 cost to rent the facility.

The adopted Fiscal Year 2019-20 Budget includes \$25,000 for donations, fee waivers, and events. Allocation of this money for the full Council versus individual Councilmembers was placed on agendas as a discussion item at past City Council meetings, however, due to time constraints, this topic has been deferred. The current two fee waivers are brought forward for Council consideration (prior to any policy discussion). On September 3, the City Council approved two donation requests for a total of \$1,000. On September 17, Council approved a fee waiver of \$1,412.63 for American Cancer Society. On October 1, Council approved a fee waiver for Sunnyhills Neighborhood Association of \$1,112.63. On November 5, Council approved a fee waiver for Greater Love Church of \$932.63.

Given the budget allocation of \$25,000 and approval of previous requests, approximately \$20,542.11 is the remaining balance of funds for donations and fee waivers.

### **Analysis**

Milpitas City Council adopted the "City Council Donation and Fee Waiver/Reduction Policy" on April 16, 2013. A copy is included as part of the fee waiver request. This policy allows Milpitas non-profit organizations to request City fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. Requesting groups must be local Milpitas non-profits and provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board. Groups are requested to file a follow up report with the City Clerk after the event for which the fee waiver or funds were requested.

**Fiscal Impact**

\$25,000 was approved and included in the adopted FY 2019-20 City budget for City Council's Unallocated Community Promotions. If the two current requests are approved, \$18,342.11 would remain in that line item of the current year's budget.

**Policy Alternatives**

**Alternative 1:** Do not approve the two fee waivers as requested.

Pros: The City's General Fund will not incur the costs of the fees waived and would receive revenue.

Con: Denial of the request would negatively impact the non-profit organizations.

Reason not recommended: Denial of this request would negatively impact the Kiwanis and Pragnya their service to the community.

**Alternative 2:** Defer approval of the fee waivers requested.

Pros: Council would have an opportunity to discuss a comprehensive policy before taking action on these two or any requested donations or fee waivers.

Con: Deferring this request would negatively impact the non-profit organizations.

Reason not recommended: Deferring approval of the requests would negatively impact the organizations.

**Recommendation**

Per request forms received by the City Clerk, move to waive the fees to rent the Milpitas Community Center Auditorium for the Kiwanis Club of Milpitas (\$1,200) and for the non-profit organization Pragnya (\$1,000).

**Attachments**

- a) Application Form + IRS letter + flyer from Pragnya
- b) Application Form + CA Attorney General letter + flyer from Kiwanis
- c) List of Donations/Fee Waivers FY 2019-20

**City of Milpitas**  
**Donation or Fee Waiver/Reduction Request Application Form**  
**for Non-Profit Organizations**

*Complete this form and return it to Milpitas City Clerk*

Please provide a copy of the IRS tax-exempt letter with the application.

*City Clerk's Office*  
**NOV 01 2019**  
**RECEIVED**

Name of Organization: PRAGNYA

Is there a Milpitas branch or affiliation? Yes - incorporated in Milpitas

Mailing Address: 225 Butler St. Milpitas, CA 95035

Contact Person: Kavita Sreedhar Telephone No. 408 660 6753

Email Address: Kavita@pragnya.org

What is your request? Donation Amount Requested       N/A       OR  
Fee Requested to be waived (type and \$ amount) Rental Fee waiver for Milpitas Community Center \$1000

Event date(s): November 10, 2019

What is the purpose of the event? This is a FREE Health Symposium for the community bringing together Internal Medicine and Integrative medicine physicians, Pediatricians, Psychologists and Nutritionists along with Developmental Pediatricians as well to help everyone including the neurodiverse community to lead a healthy and developmentally oriented life. The focus is on helping everyone in the community develop a comprehensive approach to overall Wellbeing. It is also a community integration initiative for the Developmentally Disabled / Different population to partake in an event that is informational which culminates in a dinner and dance Gala in the evening.

How will the Milpitas community benefit from this event? The event is a FREE Health Symposium - where in Doctors will come and address the community about general health issues, and how wellbeing is about good health of mind, body and soul. There will be a panel discussion with the doctors where the public will also get to ask questions and learn more. We will also have the Department of Developmental Services address the audience on what services are made available to the Developmentally different (disabled) community.

What % of the fundraising proceeds will benefit Milpitas community? The Health 360 Event is a FREE event for the community and any donations or sales if any will go to support the efforts of PRAGNYA a 501 c3 nonprofit based out of MILPITAS to conduct weekly academic support and social immersion programs for the neurodiverse members of the community by bringing together neurotypical volunteers as well.

How will the City's contribution (if granted) be recognized in any publicity? We plan on inviting the Mayor, and members of the City Council to inaugurate the event and partake in the same. We also will carry the city logos on our Event publicity material as a Community Host partner.

Within 60 days after completion of the event for which a donation was received or a fee waiver/ reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: 

Date: 10/29/2019

Print Name & Title: Kavita Sreedhar (Chief Executive Officer)

## Mary Lavelle

---

**From:** Kavita Sreedhar <kavita@pragnya.org>  
**Sent:** Thursday, October 31, 2019 2:04 PM  
**To:** Mary Lavelle  
**Cc:** Kishan S  
**Subject:** [BULK] Re: fee waiver request to City Council  
**Attachments:** PHOTO-2019-10-31-13-52-45.jpg; Revised Milpitas fee waiver request.pdf; 501c 3 letter IMG\_0609.JPG

**Importance:** Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mary:

Thank you for your email. Please find attached the revised request application per your request. Also, a clearer version of the 501 c 3 certificate.

PRAGNYA is a California 501 C 3 Non Profit organization that works in bringing together Neurodiverse Individuals and Neurotypical society and gets them to learn to acculturate to each other, communicate with each other and support each other in leading fulfilling lives through the process of acculturation and acceptance. Neurodiverse individuals such as those on the Autism Spectrum, Cerebral Palsy, Downs Syndrome and other developmental disabilities are often excluded and misunderstood or forgotten. PRAGNYA trains Neurotypical (normally developing) individuals children and adults alike in the unique Allyship Support program to become Allies and form Circles of Kindness and support for their neurodiverse peers. We conduct weekly "acculturation" and "Integration" programs (every friday/saturday and sunday) right here in Milpitas for the neurodiverse individuals and their allies.

The Health 360 event culminates in a Gratitude Gala in the evening which will be open to individuals of all abilities and especially inclusive of those with developmental disabilities and their families.

Hope this info helps.

Thanks so much and warmest regards,  
Kavita.  
408 660 6753.

On Wed, Oct 30, 2019 at 8:22 PM Mary Lavelle <[mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)> wrote:

Hello Kavita,

Yes, thank you for sending me the fee waiver request form. Several edits and additions will be needed on your application materials so that I can get it ready to place onto the City Council's agenda for consideration to approve fee waiver on November 19.

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: NOV 28 2017

PRAGNYA  
225 BUTLER ST  
MILPITAS, CA 95035-0000

Employer Identification Number:  
82-1909620  
DLN:  
26053712001817  
Contact Person: ID# 31954  
CUSTOMER SERVICE  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Public Charity Status:  
170(b)(1)(A)(vi)  
Form 990/990-EZ/990-N Required:  
Yes  
Effective Date of Exemption:  
June 8, 2017  
Contribution Deductibility:  
Yes  
Addendum Applies:  
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to [www.irs.gov/charities](http://www.irs.gov/charities). Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Letter 947



NOV 10<sup>TH</sup> 2019

SUNDAY FROM 1:00PM TO 3:30PM  
MILPITAS COMMUNITY CENTER  
457 E CALAVERAS BLVD,  
MILPITAS, CA 95035

REGISTER NOW!  
BY SCANNING THIS



## OUR SPEAKER PANEL

DR. RON SINHA

DR. SHALLY SINHA

DR. SHANI ROBBINS

DR. DANA WON

PRERNA UPPAL



INTERNAL MEDICINE  
PHYSICIAN



PEDIATRICIAN



PSYCHOLOGIST



DEVELOPMENTAL  
PEDIATRICIAN



NUTRITIONIST  
FITNESS COACH

FOR MORE INFORMATION CALL 408 832 8881

WWW.HEALTH360.EVENTS

**MEDIA  
MAHIMA**  
NEWS • VIEWS • REVIEWS

**Radio  
Dehottier**

This year's Health360 has an additional focus geared towards neurodiversity & inclusion. Neurodiversity is a concept where neurological differences are to be recognized & respected as any other human variation. Our Health360 symposium is all inclusive event & the topics discussed are meant for the comprehensive wellbeing of ALL individuals in society, neurotypical or neurodiverse (those with developmental differences / disabilities like Autism, CP, Downs Syndrome, etc.).

This year our esteemed speakers will focus on family health. Going by the culture & lifestyle of our generation i.e. packed schedules with life constantly in the RUSH HOUR mode, the "high achiever mindset guiding our every decision - we seldom find space for the quintessential "WE" time - "Self Care as a Family and community". Being mindful of the "bigger picture" as a family, a community and society, developing a mindful, proactive approach to supporting each other in achieving "everyone's well-being" (adult & child alike) is the overarching theme of this year's Health 360.

## Permit Contract

Milpitas Recreation  
457 E. Calaveras Blvd.  
Milpitas, CA 95035  
Phone: (408) 586-3210  
FAX: (408) 586-3295  
Email: --

**Permit #24304, Approved**

Oct 11, 2019 11:43 AM



Company: Pragnya  
225 Butler St.  
Milpitas, CA 95035

Agent: Kishan Sreedhar

Prepared By: David Sanchez

Home: (408) 660-6753

Charges	Taxes	Discounts	Total Charges	Deposits	Deposit Taxes	Total Payments	Refunds	Balance
\$1,020.00	\$0	\$0	\$1,020.00	\$1,000.00	\$0	(\$2,020.00)	\$0	\$0

## ▼ RESERVATIONS

Event	Resource	Center	Notes
Pragnya Type: Non-Profit Attend/Qty: 150	MCC Auditorium	Milpitas Community Center 457 E Calaveras Blvd Milpitas, Ca 95035 (408) 586-3210	--
Days Requested		Event Begins	Event Ends
Day	Date	Duration	Date
Sunday	Nov 10, 2019	12:00 PM 10 hours	Nov 10, 2019 10:00 PM
Summary		Notes	
Total Number of Dates: 1		--	
Total Time: 10 hours			

## ▼ CHARGES

Description	Event / Resource	Unit Fee	Units	Tax	Charge
Application Fee	Pragnya #24304 MCC Auditorium	\$20.00	1.00	--	\$20.00
Hourly Rental Fee	Pragnya #24304 MCC Auditorium	\$100.00	10.00	--	\$1,000.00

## ▼ DEPOSITS

Deposit Charge	Event / Resource	Charge	Tax	Amount paid	Refunds	Balance
Rental Deposit	Pragnya #24304 MCC Auditorium	\$750.00	\$0	\$750.00	\$0	\$0
Screen Deposit	Pragnya #24304 MCC Auditorium	\$250.00	\$0	\$250.00	\$0	\$0

## ▼ Payments and Refunds

Receipt #	Date	Charge Description	Resource Event	Payment
3060749.002	Oct 30, 2019	Rental Deposit	MCC Auditorium	(\$750.00)
			Credit for Pragnya #24304-Rental Deposit	
1175400.002	Oct 18, 2019	Rental Deposit	MSRC Community Room	\$750.00
			Pragnya #24304	
3060749.002	Oct 30, 2019	Application Fee	MCC Auditorium	(\$20.00)
			Credit for Pragnya #24304-Application Fee	
1175400.002	Oct 18, 2019	Application Fee	MSRC Community Room	\$20.00
			Pragnya #24304	
3060749.002	Oct 30, 2019	Hourly Rental Fee	MCC Auditorium	(\$900.00)
			Credit for Pragnya #24304-Hourly Rental Fee	
1175400.002	Oct 18, 2019	Hourly Rental Fee	MSRC Community Room	\$900.00
			Pragnya #24304	
3060749.002	Oct 30, 2019	Rental Deposit	MCC Auditorium	\$750.00
			Pragnya #24304	
3060749.002	Oct 30, 2019	Application Fee	MCC Auditorium	\$20.00
			Pragnya #24304	
3060749.002	Oct 30, 2019	Hourly Rental Fee	MCC Auditorium	\$900.00
			Pragnya #24304	
1175776.002	Oct 30, 2019	Hourly Rental Fee	MCC Auditorium	\$100.00
			Pragnya #24304	
1175776.002	Oct 30, 2019	Screen Deposit	MCC Auditorium	\$250.00
			Pragnya #24304	

## ▼ CUSTOM QUESTIONS

Question	Answer
Will you be serving alcohol?	Yes
Alcohol is not permitted at Youth (20 or younger) Events.	
Will you be selling alcohol?	No

Thank you for renting a Milpitas Recreation Services' facility!

This paperwork and the Named Applicant are required for entry into the permitted facility. Entry time is the time listed on the paperwork. If there are facility issues on the day of your event, contact the facility staff on site.

**Park Rentals:** Please arrive early to make sure the proper signage is placed on the picnic tabletops. If there are park issues on the day of your event, please contact the Milpitas Police Department at 408-586-2400.

OCT 31 2019

RECEIVED

**City of Milpitas  
Donation or Fee Waiver/Reduction Request Application Form  
for Non-Profit Organizations**

*Complete this form and return it to Milpitas City Clerk*

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: Kiwanis Club of Milpitas

Is there a Milpitas branch or affiliation? yes local club

Mailing Address: 1152 Pescadero St  
MILPITAS

Contact Person: Dennis Grillo Telephone No. 408 2057103

Email Address: dennisgrillo@gmail.com

What is your request? Donation Amount Requested \_\_\_\_\_ OR

Fee Requested to be waived (type and \$ amount) \$4,200.00 rental fee for Auditorium

Event date(s): Feb 7, 2020 Community Center Aud.

What is the purpose of the event? Kiwanis Annual Fundraiser to  
support Milpitas Youth

How will the Milpitas community benefit from this event? All funds are used  
to support youth programs and disadvantaged children

What % of the fund raising proceeds will benefit Milpitas community? 100%

How will the City's contribution (if granted) be recognized in any publicity? All ads and  
publications will recognize the City of Milpitas  
as a major sponsor.

*Within 60 days after completion of the event for which a donation was received or a fee waiver/reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.*

Signature of Officer: [Signature] Date: 10/22/19

Print Name & Title: Dennis Grillo, Treasurer

**KAMALA D. HARRIS**  
**Attorney General**

*Foundation*  
**State of California**  
**DEPARTMENT OF JUSTICE**



1300 I Street  
P O Box 903417  
Sacramento, CA 95203-4470  
Telephone: (916) 445-2021 Ext 4  
Fax: (916) 444-3651  
E-Mail Address: Registration@doj.ca.gov

January 6, 2014

KIWANIS CLUB OF MILPITAS FOUNDATION  
PO BOX 360730  
MILPITAS CA 95036

CT FILE NUMBER: CT0202706

**RE: CONFIRMATION OF REGISTRATION WITH THE ATTORNEY GENERAL'S REGISTRY  
OF CHARITABLE TRUSTS**

The captioned entity is now registered with the Registry of Charitable Trusts and has been assigned the registration ("CT") number set forth above.

The RRF-1 must be filed annually four months and 15 days after the end of the organization's accounting period. If an extension was requested from IRS, please file the RRF-1 with the completed IRS informational return together with a copy of all extension requests.

The organization's address of record is used to mail reporting forms at the end of each accounting period. Please advise us, in writing, of any address change.

If the captioned organization contracts with a commercial fundraiser for charitable purposes or fundraising counsel, that entity must also register and file annual reports with the Registry.

All forms and instructions are available on our website at <http://oag.ca.gov/charities>.

Directors of nonprofit corporations are required to adhere to the provisions of the California Nonprofit Corporation Law (Corporations Code section 5000, et seq.).

Trustees for charitable purposes are required to adhere to the provisions of California Probate Code (commencing with section 15000).

Doc CT-410 Registration Confirmation

scheduled to go before Council.

We will be out of the country all of December and I will ensure a Kiwanis member attends to answer any questions.

Marsha

## ***16th Annual MUSD Crabfeed & Auction***

**Hosted by Kiwanis Club of Milpitas Foundation**

**Friday, February 7th, 2020 from 5pm - 9pm**

**Milpitas Community Center**

**457 East Calaveras Blvd.**

**\$60 per person**

**\$55 before January 12th**

**Reserve a table for 10 before**

**January 12th \$600**

**(includes 2 bottles of wine/beer  
and priority seating)**

**(All other seating is first come/ first seated)**

*Dinner is served  
between  
6pm-8pm*

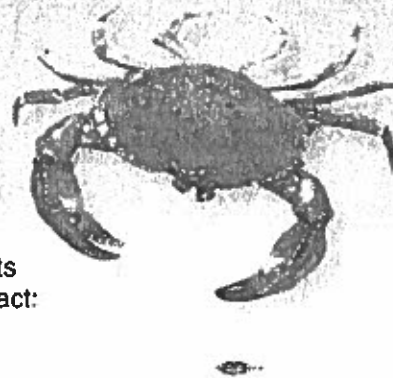


**All proceeds support MUSD students  
For tickets and more information contact:**

**Dennis @ (408)205-7103 or**

**Mike @ (408)306-3586**

<https://kiwanisclubofmilpitas16annual.eventbrite.com>



## Permit Contract

Milpitas Recreation  
457 E. Calaveras Blvd.  
Milpitas, CA 95035  
Phone: (408) 586-3210  
FAX: (408) 586-3295  
Email: --

Permit #23083, Approved  
Feb 8, 2019 8:08 AM



Dennis Grill  
1182 Pescadero St  
Milpitas, CA 95035  
Email: dennisgrill@gmail.com

Customer Type: Customer  
Prepared By: Leticia Silva

Customer ID: 11089  
Home: (408) 946-8337

Charges	Taxes	Discounts	Total Charges	Deposits	Deposit Taxes	Total Payments	Refunds	Balance
\$1,220.00	\$0	\$0	\$1,220.00	\$500.00	\$0	(\$1,720.00)	\$0	\$0

## RESERVATIONS

Event	Resource	Center	Notes
Kiwanis Club Crab Feed Type: Private Rental Attend/Qty: 300	MCC Auditorium	Milpitas Community Center 457 E Calaveras Blvd Milpitas, Ca 95035 (408) 586-3210	--

Days Requested		Event Begins	Duration	Event Ends	
Day	Date			Date	Time
Friday	Feb 7, 2020	3:00 PM	6 hours	Feb 7, 2020	9:00 PM
Summary				Notes	
Total Number of Dates: 1				--	
Total Time: 6 hours					

## CHARGES

Description	Event / Resource	Unit Fee	Units	Tax	Charge
Application Fee	Kiwanis Club Crab Feed #23083 MCC Auditorium	\$20.00	1.00	--	\$20.00
Hourly Rental Fee-Resident	Kiwanis Club Crab Feed #23083 MCC Auditorium	\$200.00	6.00	--	\$1,200.00

## DEPOSITS

Deposit Charge	Event / Resource	Charge	Tax	Amount paid	Refunds	Balance
Rental Deposit	Kiwanis Club Crab Feed #23083 MCC Auditorium	\$500.00	\$0	\$500.00	\$0	\$0

## Payments and Refunds

Receipt #	Date	Charge Description	Resource Event	Payment
1162102.002	Feb 8, 2019	Application Fee	MCC Auditorium Kiwanis Club Crab Feed #23083	\$20.00
1175655.002	Oct 25, 2019	Rental Deposit	MCC Auditorium Kiwanis Club Crab Feed #23083	\$500.00
1175655.002	Oct 25, 2019	Hourly Rental Fee-Resident	MCC Auditorium Kiwanis Club Crab Feed #23083	\$1,200.00

#### DISCLAIMERS

The BALANCE OF YOUR FEES and a ROOM DIAGRAM must be submitted at least 30 days prior to your rental. Fees may be paid in the form of cash, cashier's check, money order or credit card during our normal business hours. (no personal checks are accepted).

#### CUSTOM QUESTIONS

Question	Answer
Will you be serving alcohol?	Yes
Alcohol is not permitted at Youth (20 or younger) Events	.
Will you be selling alcohol?	Yes
You will be required to submit a copy of you alcohol permit.	.

Thank you for renting a Milpitas Recreation Services' facility!

This paperwork and the Named Applicant are required for entry into the permitted facility. Entry time is the time listed on the paperwork. If there are facility issues on the day of your event, contact the facility staff on site.

Park Rentals: Please arrive early to make sure the proper signage is placed on the picnic tabletops. If there are park issues on the day of your event, please contact the Milpitas Police Department at 408-586-2400.

**CITY COUNCIL UNALLOCATED COMMUNITY PROMOTIONS BUDGET**  
**Fee Waiver + Other Requests by FY**

Fee Waiver or Donation Requested by:	Event/Activity	Event Date	\$ Amount waived or donated	Date Approved or Scheduled for Consideration by City Council	City Council Community Promotions Unallocated 100-100-4203 balance
<b><u>FY 2019-20</u></b>					\$25,000.00
Korean Language & Culture Foundation	Hangeul Day @Library - donation	9/19/2019	\$500.00	approved 9/3/2019	\$24,500.00
Milpitas Community Educational Endowment	Mid-Autumn Festival - donation	9/28/2019	\$500.00	approved 9/3/2019	\$24,000.00
American Cancer Society	Bark for Life run/walk - park rental fee waiver	10/5/2019	\$1,412.63	approved 9/17/2020	\$22,587.37
Sunnyhills Neighborhood Association	Halloween event - Park + Permit fee waiver	10/26/2019	\$1,112.63	approved 10/01/2019	\$21,474.74
Greater Love Church of God in Christ	carwash fundraiser - Permit fee waiver	10/5, 12 & 25, & 11/01/2019	\$932.63	approved 11/05/2019	\$20,542.11
Pragnya	Health 360 - waive rental fee for Community Center Auditorium	11/10/2019	\$1,000.00	scheduled 11/19/2019	\$19,542.11
Kiwanie Club of Milpitas	Crab feed - waive rental fee for Community Center Auditorium	2/07/2020	\$1,200.00	scheduled 11/19/2019	\$18,342.11



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Receive a follow up report from staff on the affordable housing requirements for a 40-unit residential condominium building located at 2001 Tarob Court</b>
<b>Category:</b>	Consent Calendar-Community Development
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	<b>Ned Thomas, Planning Director, 408-586-3273</b>
<b>Recommendation:</b>	<b>Receive a follow up report from staff on the affordable housing requirements for a 40-unit residential condominium building located at 2001 Tarob Court</b>

### **Background:**

Section XII-3.00 of the Milpitas Municipal Code (MMC) requires all new residential development projects of ten units or more designed and intended for permanent occupancy to designate 15% of the total number of dwelling units within the development as affordable units.

On August 20, 2019, the City Council held a public hearing on a 40-unit residential condominium building located at 2001 Tarob Court. The City Council voted 4-0 (with Mayor Tran absent) to adopt the resolution to tentatively approve the proposed project subject to Council review and approval of the required findings, to be provided in writing by the City Attorney, for an exception to the requirements of the Affordable Housing Ordinance to allow payment of fees in lieu of reserving six affordable units within the project. The City Council directed the City Attorney and staff to prepare findings to support the in-lieu fee exception to the Affordable Housing Ordinance and to place the final resolution on the consent agenda for Council review at their next meeting to approve the findings of exception.

On October 15, 2019, the City Council requested that the findings for the exception be rescheduled for future City Council public hearing.

### **Analysis:**

On November 8, 2019, after further discussion with staff, the applicant submitted a letter to the City withdrawing their request for an exception to the requirements of the Affordable Housing Ordinance. The applicant will provide six affordable units on the project site, and therefore, findings in support of the affordable housing in-lieu fee exception are no longer required. Attachment A is a copy of the applicant's letter requesting withdrawal of the exception. Attachment B is a copy of the previously approved City Council Resolution for the project, which includes the requirement to comply with the Affordable Housing Ordinance (Condition #25) and removes any findings needed to grant an exception to the requirements of the Affordable Housing Ordinance as they are no longer applicable based on the applicant's withdrawal of the exception request.

A final copy of the adopted resolution with the findings removed is included in the agenda packet.

### **Fiscal Impact:**

None

### **California Environmental Quality Act:**

Not a project, thus not applicable.

**Recommendation:**

Receive a follow-up report from staff on the affordable housing requirements for a 40-unit residential condominium building located at 2001 Tarob Court.

**Attachments:**

A: Applicant Letter Withdrawing Request for In-Lieu Fee Exception dated November 8, 2019

B: Adopted Resolution No. 8899 Approving Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment (Affordable Housing exception findings removed)

November 8, 2019

Cecily Barclay  
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F. +1.415.344.7317

VIA EMAIL [nthomas@ci.milpitas.ca.gov](mailto:nthomas@ci.milpitas.ca.gov)

Ned Thomas  
Planning Director  
City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035

**Re: 2001 Tarob Court  
Site Development Permit (SD18-0014),  
Conditional Use Permit (UP19-0009),  
Vesting Tentative Map (MT18-0004)**

Dear Ned:

Thank you for taking the time to meet with me yesterday. This letter confirms that True Life Companies, the applicant for the above-referenced project, withdraws its request for an exception to the requirement that affordable units be built on site, leaving no further issues relating to findings for any such exception for consideration by the City Council.

Please provide the applicant with the Resolution previously adopted by the City Council on August 20, 2019 approving Site Development Permit (SD18-0014), Conditional Use Permit (UP19-0009), Vesting Tentative Map (MT18-0004), and Environmental Assessment (EA19-0002), as referenced in the staff report for the September 17, 2019 City Council hearing at your earliest convenience.

Very truly yours,

Cecily Barclay

cc: Hanson Hom, City of Milpitas  
Christopher Diaz, City Attorney  
Scott Menard  
Leah Beniston

**RESOLUTION NO. 8899**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD18-0014, CONDITIONAL USE PERMIT NO. UP19-0009, VESTING TENTATIVE MAP NO. MT18-0004, AND ENVIRONMENTAL ASSESSMENT NO. EA19-0002 TO ALLOW A 40-UNIT RESIDENTIAL CONDOMINIUM BUILDING, UP TO 49 FEET IN HEIGHT (FOUR STORIES), WITH PARKING FOR UP TO 74 VEHICLES, ON A 1.22 ACRE SITE LOCATED IN THE MULTI-FAMILY HIGH DENSITY RESIDENTIAL (R3) ZONING DISTRICT AT 2001 TAROB COURT, AND MAKING ~~FINDINGS PURSUANT TO SECTION XII 1.00, et seq. OF THE MILPITAS MUNICIPAL CODE AND CEQA FINDINGS PURSUANT TO CEQA GUIDELINES SECTIONS 15162, 15163, 15164, 15168, 15182, AND 15183~~**

**WHEREAS**, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 et seq.), the State CEQA Guidelines (California Code of Regulations, title 14, § 15000 et seq.) (collectively, “CEQA”), the City of Milpitas is the lead agency for the proposed project described below; and

**WHEREAS**, on June 3, 2008, the City Council of the City of Milpitas certified an Environmental Impact Report (“EIR”) prepared to analyze the environmental impacts associated with the proposed Transit Area Specific Plan (the “TASP EIR,” State Clearinghouse No. 2006032091), and subsequently adopted the Transit Area Specific Plan (the “TASP”); and

**WHEREAS**, the TASP EIR reviewed the potential environmental impacts associated with the implementation of the TASP, which envisioned the development of 7,109 dwelling units, 287,075 square feet of retail space, 993,843 square feet of office and industrial park space, and 350 hotel rooms; and

**WHEREAS**, 2001 Tarob Court is located within the TASP planning area; specifically, within the Trade Zone/Montague subdistrict of the TASP; and

**WHEREAS**, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified has been adopted, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public Resources Code § 21166 and State CEQA Guidelines § 15162 require additional environmental review; and

**WHEREAS**, on November 2, 2018, The True Life Companies (the “Applicant”) submitted an application to the City of Milpitas for the approvals necessary to develop a 40-unit condominium residential project at 2001 Tarob Court. The project (the “Project”) thus consists of and requires:

- a. Site Development Permit (SD18-0014) to allow the development of four-story building with up to forty residential units on a 1.22 acre site; and
- b. Conditional Use Permit (UP19-0009) to allow the condominium use; and
- c. Vesting Tentative Map (MT18-0004) to establish forty residential condominium spaces and related common areas and to record site easements; and
- d. Environmental Assessment (EA19-0002) to review and assess all requested entitlements for consistency with the 2008 Transit Area Specific Plan EIR.

**WHEREAS**, the Planning Division completed an environmental assessment No. EA19-0002 for the Project in accordance with CEQA, and the Planning Commission recommended that the City Council determine this Project is covered under the program of activities identified in the Transit Area Specific Plan EIR, SCH#2006032091, certified by the City Council on June 3, 2008, based on the CEQA finding included in this resolution (the “Addendum,” a true and correct copy of which is attached hereto and incorporated herein as **Exhibit 2**); and

**WHEREAS**, per 14 C.C.R (CEQA Guidelines) Section 15164(b), the Addendum demonstrates and concludes that none of circumstances necessitating preparation of a supplemental or subsequent EIR, as specified in CEQA Guidelines Sections 15162 or 15163 are present in that there are (a) no substantial changes are proposed in the Project which will

require major revisions of the TASP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (b) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken which will require major revisions in the TASP EIR due to new or substantially more severe significant effects; and (c) no new information of substantial importance, as defined in CEQA Guidelines Section 15162, which was not known and could not have been known at the time the TASP EIR was certified has become available; and

**WHEREAS**, the City Council hereby adopts the Addendum makes and accepts as its own the findings set forth in **Exhibit A** attached hereto; and

**WHEREAS**, as separate and independent bases, the City Council hereby finds and determines that the Project is exempt from further CEQA review pursuant to (1) CEQA Guidelines Section 15183 (projects consistent with a Community Plan, General Plan or Zoning; (2) CEQA Guidelines Section 15182 (residential projects consistent with a specific plan); and (3) CEQA Guidelines Section 15168 (projects within the scope of a program EIR); and

**WHEREAS**, the Planning Commission is an advisory body to the City Council pursuant to Milpitas Municipal Code Section XI-10-64.03 (Consideration of Concurrent Applications), where, as here, due to the application for density bonus pursuant to Milpitas Municipal Code Section XI-10-54.15, the City Council is the highest review authority for the Project, and, accordingly, all review by other bodies with approval authority over the application shall be in the form of a recommendation to the City Council; and

**WHEREAS**, on July 31, 2019, the Planning Commission held a duly-noticed public hearing, during which meeting the Planning Commission considered the Addendum EA19-0002, as well as the requested Site Development Permit SD18-0014, Conditional Use Permit UP19-0009, and Vesting Tentative Map MT18-0002 for 2001 Tarob Court, heard a presentation from staff, and had the opportunity hear from members of the public; and

**WHEREAS**, by adoption of Resolution No. 19-022, the Planning Commission recommended the City Council approve Site Development Permit No. SD18-0014, Conditional Use Permit No. UP19-0009, Vesting Tentative Map No. MT18-0002, and Environmental Assessment No. EA19-0002 for 2001 Tarob Court; and

**WHEREAS**, the documents and other materials which constitute the record of proceedings upon which the City Council bases the findings contained within this Resolution are available and may be reviewed at Milpitas City Hall, located at 455 E. Calaveras Boulevard, Milpitas, California 95035; and

**WHEREAS**, on August 20, 2019, the City Council held a duly-noticed public hearing, during which meeting the City Council considered the Environmental Assessment No. EA19-0002, as well as the requested Site Development Permit No. SD18-0014, Conditional Use Permit No. UP19-0009, and Vesting Tentative Map No. MT18-0002 for 2001 Tarob Court, heard a presentation from staff, and had the opportunity hear from members of the public; and

**WHEREAS**, the findings and conclusions made by the City Council pursuant to this Resolution are based upon the oral and written evidence before it as a whole; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

#### **SECTION 1. Recitals**

The City Council has considered the full record before it, which may include, but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and incorporated herein by reference.

#### **SECTION 2. California Environmental Quality Act Findings**

The proposed Project is covered under the scope of activities approved under the TASP EIR, SCH#2006032091, which was certified by the Milpitas City Council on June 3, 2008. The EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The proposed 40 residential units fall within this scope of development activity contemplated in the TASP EIR. LSA Associates completed an environmental assessment of the proposed Project to confirm the proposed Project is within the scope of the TASP EIR. The analysis found that the Project is consistent with the TASP EIR and confirmed that the Project is within the scope of development density considered under the TASP EIR. No new impacts were identified and no new mitigation measures are required. Policies and/or mitigation measures required of projects covered under the TASP EIR are included as Conditions of Approval. Pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15168(c)(2), the Project is except from further review under CEQA.

### **SECTION 3. Vesting Tentative Map Findings (Section XI-1-20.01)**

The City Council makes the following findings based on the evidence in the administrative record in support of Vesting Tentative Map No. MT18-0004:

*A. The tentative subdivision map is consistent with the General Plan.*

The Project site has a General Plan land use designation of High Density, Transit Oriented Residential (HD-TOR). The intent of this designation is to provide high-density housing at a density range of 21-40 dwelling units/acre. As this Project proposes 32.8 dwelling units/acre, it is consistent with both the intended land use of the General Plan and the relevant density requirement.

Further, the Project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- 1. 2.a 1-31 Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

The Project is consistent with this policy as it includes attractive four-story residential buildings in close proximity to the future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague Subdistrict, with connections to the BART and Light Rail transportation hubs.

- 2. 2.a 1-32 Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

The Project is consistent with this policy as it has been designed per the adopted design requirements contained in the Transit Area Plan. As demonstrated in Section B(2) below, the project meets the applicable requirements of the Transit Area Plan, including building setbacks and height, density, parking, open space, landscaping, access and circulation.

*B. None of the conditions identified in California Government Code Section 66474 exist, to wit:*

- 1. That the proposed map is not consistent with applicable general and specific plans as specified in Government Code Section 65451.*

As set forth in Section 3(A) above, the map proposes the development of the site into 40 residential condominium units at a density of 32.8 dwelling units/acre. The General Plan and Transit Area Specific Plan land use designation applicable to the site (High Density, Transit Oriented Residential – (HD-TOR) permits residential development at densities of 21 to 40 dwelling units/acre. The map is thus consistent with the General Plan and Transit Area Specific Plan.

2. *That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*

The design and improvement of the subdivision is consistent with the density range of 21-40 dwelling units per acre as permitted by the General Plan and Transit Area Specific Plan. The proposed density is 32.8 dwelling units per acre. The proposed project is also consistent with the Transit Area Specific Plan development standards, including height (maximum of 49' proposed, where 75' is maximum allowed), number of vehicular parking spaces (74 vehicular spaces proposed, where a minimum of 74 is allowed), bicycle parking (14 spaces proposed, where 14 are required), building orientation (proposed buildings will face streets, where requirement provides building must face streets).

3. *That the site is not physically suitable for the type of development.*

The site is surrounded by property designated for high density, transit-oriented residential development under the City's General Plan and zoned for this type of development under the Transit Area Specific Plan. In addition, the developer has determined this site to be suitable for the higher density development based on the location, physical attributes, and proposed infrastructure improvements.

4. *That the site is not physically suitable for the proposed density of development.*

The City Council, through adoption of Resolution No. 8702, has determined that the site is physically suitable for development at the proposed density of 32.8 dwelling units per acre, inasmuch as it has amended the applicable general plan land use designation to High Density, Transit Oriented Residential (HD-TOR), which allows densities of 21-40 dwelling units per acre. The site is also flat and has direct access to adjacent streets (Tarob Court and Lundy Place) to accommodate the proposed density of the development.

5. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The Project, including the subdivision and its associated improvements, has been subjected to environmental review under CEQA through the preparation of an Environmental Assessment/Categorical Exemption Memo (Exhibit 2 to Exhibit A of Attachment A). The memo did not find that the project would be likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Project is also located in an urbanized area and previously developed as an industrial building, and therefore, will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

6. *That the design of the subdivision or type of improvements is likely to cause serious public health problems.*

The Project, including the subdivision and its associated improvements, has been subjected to environmental review under CEQA through the preparation of an Environmental Assessment/Categorical Exemption Memo (Exhibit 2 to Exhibit A). The memo did not find that the design of the subdivision or type of improvements is likely to cause serious public health problems.

7. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

Upon review of the subdivision map, it has been determined that the design of the subdivision or the type of improvements will not conflict with any easements acquired by the public at large, for access through or use of, property within the proposed subdivision. The subdivision does not involve the vacation of easements, however, the existing right-of-way will be abandoned and portions of the area will be retained for a Public Services Utility Easement (PSUE).

#### SECTION 4. Site Development Permit Findings (Section XI-10-57.03(F)(1))

The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD18-0014:

- A. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The Project's site design is consistent with the TASP development standards for the Trade Zone/Montague Subdistrict. The Project consists of 40 condominium units and associated site amenities on a 1.22-acre site. The building's contemporary architectural design features varied materials and complements previously-approved and adjacent projects within the subdistrict. The Project has a strong sense of identity, achieving compatibility and aesthetic harmony with surrounding developments.

- B. *The Project is consistent with the Milpitas Zoning Ordinance.*

The Project site is zoned R3 (Multiple-Family, High Density Residential with a Transit Oriented Development (-TOD) Overlay). Residential uses are permitted in the zoning district. The proposed residential uses are permitted in the zoning district. As demonstrated in the Table 1, the Project conforms to the zoning district and meets the intent for this type of project envisioned in this area.

**Table 1:**  
**Summary of TASP R3-TOD Development Standards**

<b>Standard (R3-TOD)</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Compliance (Y/N)</b>
<b>Height</b>	Up to 75 feet	49 feet	Y
<b>Setbacks</b>	Front Yard: 8 foot-15 foot maximum; Side and Rear Yards: 15 foot minimum,	10 foot front yard setback; 8 foot to overhead projection; 40 foot side and 21 foot rear yard setback	Y
<b>Projections</b>	Up to 6 feet	2 feet	Y
<b>Building Orientation</b>	Buildings must face street	Buildings face street	Y
<b>Density</b>	21-40 du/ac	32.8 du/ac	Y
<b>Parking (Resident)</b>	2-3 bedroom – 1.6 – 2 covered per unit Between 64 (min) - 80 (max) spaces	64 spaces	Y
<b>Parking (Guest)</b>	15 percent of required = 10 spaces	10 spaces	Y

<b>Parking (Bicycle)</b>	1 space per 4 housing units, exempting units with private garages = 10 spaces; on-street guest racks equivalent to 5 percent of parking requirement = 4 spaces	10 secure, long term spaces 4 exterior guest spaces	Y
<b>Usable Open Space</b>	Minimum 25 percent of the total site shall be usable open space or recreational facilities = 0.31 acres required;	0.44 acres	Y
<b>Private Open Space</b>	An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least 4 ½ feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit.  200 x 40 = 8,000 SF or 0.18 acres	Private recreational area = 0.28 acres  60 SF balconies provided per unit. 60 x 40 = 2,400 SF or 0.06 acres. 0.06/0.18 = 30% of the required contiguous open space  Total private open space = 0.31 acres = 337.6 SF/unit	Y

*C. The Project is consistent with the Milpitas General Plan.*

The Project site has a General Plan land use designation of High Density, Transit Oriented Residential (HD-TOR). The intent of this designation is to provide high-density housing at a density range of 21-40 dwelling units/acre. As this Project proposes 32.8 dwelling units/acre, it is consistent with both the intended land use of the general plan and the relevant density requirement.

Further, the Project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- a. *2.a 1-31 Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

The Project is consistent with this policy as it includes attractive four-story residential buildings in close proximity to the future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague Subdistrict, with connections to the BART and Light Rail transportation hubs.

- b. 2.a 1-32 Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

The Project is consistent with this policy as it has been designed per the adopted design requirements contained in the Transit Area Plan. As demonstrated in subsection D, the Project meets the applicable requirements of the Transit Area Plan, including building setbacks and height, density, parking, open space, landscaping, access and circulation.

*D. The Project is consistent with the Specific Plan.*

The Project proposes the development of the site in to one four-story building consisting of 40 residential condominium units at a density of 32.8 dwelling units/acre. The Transit Area Specific Plan land use designation applicable to the site (High Density, Transit-Oriented Residential (HD-TOR)) permits residential development at densities of 21 to 40 dwelling units/acre. The Project is thus consistent with the Transit Area Specific Plan use and density requirements. As demonstrated in Table 1, the project also complies with TASP development standards. Landscaping along the streets and greenspace with the development is provided as envisioned by the TASP.

## **SECTION 5. Conditional Use Permit Findings (Section XI-10-57.04(F))**

The City Council makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP19-0009:

*A. The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare.*

The Project will not be detrimental or injurious to property or improvements in the vicinity, nor to the health, safety or general welfare. The project is consistent with other high density residential projects within the TASP. The condominium project creates housing opportunities and increases the diversity of housing types in the TASP area.

*B. The Project is consistent with the Milpitas Zoning Ordinance.*

The Project is consistent with the Zoning Ordinance, as the condominium use is conditionally permitted per MMC Table XI-10-4.02-1. The project conforms to all of the development standards set forth by the Zoning Ordinance, as discussed in the Zoning Ordinance consistency discussion set out in support of issuing a Site Development Permit.

*C. The Project is consistent with the Milpitas General Plan.*

As stated in the Site Development Permit discussion above, the Project implements the range of uses and the density of development set forth in the Milpitas General Plan.

*D. The Project is consistent with the Transit Area Specific Plan.*

As stated in the Site Development Permit discussion above, the Project implements the range of uses, the density of development and the development standards as set forth in the TASP.

## **SECTION 6. ~~Affordable Housing Ordinance (Section XII-1-4.00)~~**

~~The City Council denies the Applicant's request for an exception from the requirement to construct affordable housing units as part of the Project as required by the Milpitas Municipal Code Section XII-1-00, et seq. The Applicant has failed to demonstrate that the Project qualifies for such an exception based upon the following findings based on the evidence in the public record for the affordable housing exception request:~~

~~A. — The exception requested does not exceed the minimum affordable requirements; and~~

~~The exception requested does not exceed the minimum affordable requirements. The applicant is providing the minimum required fee in lieu, which does not exceed the minimum affordable requirements. The affordable housing fund is used to produce very low, low, and moderate income ownership or rental housing in the City. If the applicant were to build six Below Market Rate (BMR) units on site, it would allow six low income households the opportunity to have permanent housing in the City. Since the applicant has requested to pay the in-lieu fee, those contributions can only be used to assist future developers to build affordable units, and not to subsidize rents in existing low income housing. Therefore, the exception would further delay the construction of new affordable units in the City and would not exceed the minimum affordable requirements.~~

~~B. — The project is not better served with the exception; or~~

~~The record does not demonstrate that the Project is better served with the exception. The applicant argues that social assistance programs are not available within the TASP Trade Zone/Montague Subdistrict. However, on June 12, 2018, City Council approved a 102-unit multifamily affordable housing development with community space and offices for supportive services located at 355 Sango Court. The TASP envisions a Tarob Court connection to Sango Court. This particular development is also located within the TASP Trade Zone/Montague Subdistrict. Therefore, the argument cannot be made that projects should be located near established social services, as the project site is located near a recently entitled project with supportive services.~~

~~C. — The community benefits do not exceed the project benefits.~~

~~The record does not demonstrate that the community benefits exceed the project benefits. The project is not providing any identified community benefit to the City. Example of community benefits include contributions to the school district, Fire Department, Recreation Department, etc. A compliant project that meets the development standards of the zoning code is not inherently considered a community benefit, and therefore does not exceed the potential benefit of providing on-site affordable units.~~ **[Intentionally Blank]**

## **SECTION 7. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held incorrect, invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared incorrect, invalid, illegal, or unenforceable.

## **SECTION 8. City Council Approval**

The City Council hereby approves Site Development Permit No. SD18-0014, Conditional Use Permit No. UP19-0009, Vesting Tentative Map No. MT18-0004, and Environmental Assessment No. EA19-0002 (subject to the Conditions of Approval attached hereto and incorporated herein as **Exhibit 1**), based on the above findings.

PASSED AND ADOPTED this 20<sup>th</sup> day of August 2019, by the following vote:

AYES: (4)

NOES: (0)

ABSENT: (0)

ABSTAIN: (1)

ATTEST:

A        APPROVED:

Mary Lavelle, City Clerk

             Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

## EXHIBIT '1'

### CONDITIONS OF APPROVAL 2001 TAROB COURT RESIDENTIAL DEVELOPMENT

**SITE DEVELOPMENT PERMIT NO. SD18-0014**  
**CONDITIONAL USE PERMIT NO. UP19-0009**  
**VESTING TENTATIVE MAP NO. MT18-0004**  
**ENVIRONMENTAL ASSESSMENT NO. EA19-0001**

#### GENERAL CONDITIONS

1. General Compliance: The Permittee and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. **SITE DEVELOPMENT PERMIT SD18-0014, CONDITIONAL USE PERMIT UP19-0009, VESTING TENTATIVE MAP MT18-0004, and ENVIRONMENTAL ASSESSMENT EA19-0002** (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed. The Permittee shall develop the site in accordance with the approved Attachments and as modified by these Conditions of Approval.
2. Effective Date: Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the City Council approved this Permit.
3. Acceptance of Permit: Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration: Pursuant to Section XI-10-64-06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the Project:
  - a. Completes a foundation associated with the Project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension: Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account: If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's project job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit as applicable, Permittee shall pay in full the Project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P/E)**
7. Notice: Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the

Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).

8. Cost and Approval: Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. **(ALL)**
9. Conditions: Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Project is operating under the permits and approvals in this Resolution. **(ALL)**
10. Compliance with Laws: The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state and federal laws, rules, regulations, guidelines, requirements and policies. **(CAO/P/E/B)**
11. Indemnification: To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including, but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Permittee, City and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to Vesting Tentative Map No. MT16-0003, and the balance of the Permit shall be unaffected by Government Code Section 66474.9.
12. Certificate of Insurance: Permittee shall provide certificate of insurance and name City as an additional insured in its insurance policies for the Project.
13. Revocation, Suspension, Modification: This Permit may be suspended, revoked or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.
14. Severability: If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.
15. Response to Conditions of Approval: Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
16. Compliance with Fire Department and California Fire Code: The project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code, as adopted by the City. Changes to the site plan and/or buildings requires review and approval by the Fire Department. **(F)**
17. Development in Conformance with Approved Plans: Permittee shall develop the approved Project in conformance with the plans dated July 10, 2019 and approved by the City Council on August 20, 2019, in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review, and obtain the approval of the Planning Director or

Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)

### **PLANNING CONDITIONS**

18. Landscape: All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive and effective appearance.
19. Architecture: Permittee shall submit updated Project Architecture depicted on the Building Elevations sheets to the Planning Division, and obtain approval from the Planning Director or Designee prior to Building Permit submittal. Any deviations from approved Project Architecture shall be approved at the sole discretion of the Director of Planning or his/her approved designee
20. Street Lights: Permittee shall provide street lighting along all street frontages subject to the review and approval of the Planning Division. Permittee shall likewise install pedestrian scale lights along all public and private street frontages. The Permittee shall submit a photometric plan to determine appropriate light levels with submittal of on-site improvement plans.
21. Parking: Parking shall be provided as depicted on the Site Plan approved by the City Council and shall consist of the following:
  - a. **RESIDENT**: A total of 64 spaces within the parking garage and on the site.
  - b. **GUEST**: A total of 10 guest spaces are to be provided in the internal driveway and in the parking garage.
  - c. **COMPACT**: 29 of the resident and guest parking spaces will be designated as compact spaces. No additional spaces shall be compact without written approval from the Planning Director or his/her designee.
22. Bicycle Racks: A minimum of ten (10) long-term bicycle parking spaces shall be installed on the site. A total of four (4) short-term bicycle parking spaces shall also be installed on the site.
23. Trees: The project will remove 34 trees and replace with 40 trees, in conformance with the plans approved by City Council on August 20, 2019.
24. Public Art Requirement: Permittee shall comply with the City's Public Art Requirements for Private Development, as set forth in Milpitas Municipal Code Section XI-10-14. Fee shall be no less than one-half of one percent of building development costs and shall be payable at time of building permit issuance.
25. Affordable Housing Requirement: Permittee shall comply with the City's Affordable Housing Ordinance, as set forth in Milpitas Municipal Code Section XI-1-3.00. In accordance with the Affordable Housing Ordinance, all new residential development projects of ten units or more designed and intended for permanent occupancy shall construct 15 percent of the total number of dwelling units within the development as affordable units, unless otherwise determined by the City Council.

### **PLANNING & BUILDING PROJECT-RELATED TASP MITIGATION MEASURES & REQUIRED PROJECT DESIGN FEATURES**

#### **Biological Resources (TASP Policy 5.26)**

26. Nesting Birds: To mitigate impacts on non-listed special-status nesting raptors and other nesting birds, a qualified biologist will survey the site for nesting raptors and other nesting birds within 14 days prior to any ground disturbing activity or vegetation removal. Results of the surveys will be forwarded to the U.S. Fish and Wildlife Services (USFWS) and CDFG (as appropriate) and, on a case-by-case basis, avoidance procedures adopted. These can include construction

buffer areas (several hundred feet in the case of raptors) or seasonal avoidance. However, if construction activities occur only during the non-breeding season between August 31 and February 1, no surveys will be required. **(P)**

#### **Noise (TASP Policy 5.10))**

27. Noise Insulation: Prior to issuance of any building permit, Permittee shall demonstrate that the Project will meet the required 45 dBA maximum interior noise standard.

#### **Air Quality (TASP Policy 5.16)**

28. Dust Control Emissions: During the construction of the Project, Permittee shall comply with all of the following:
- a. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas and unpaved roads) shall be watered two times per day.
  - b. All haul trucks transporting soil, sand or other loose material off the site shall be covered.
  - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day or more often if determined necessary by City Engineer or designee. The use of dry power sweeping is prohibited.
  - d. All vehicle speeds on unpaved roads shall be limited to 15 MPH.
  - e. All roadways, driveways and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
  - h. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. **(B)**
29. ROG Emissions: Prior to issuance of any building permit, Permittee shall develop, submit and obtain approval from the City of a plan to reduce ROG emissions by 17 percent or greater during the architectural coating phase of the construction. Acceptable measures to achieve this goal include, but are not limited to, using paint that contains 125 grams per liter of VOC or less, the use of pre-fabricated building materials, or a combination of both. The plan shall be implemented as approved by the City. **(B)**

#### **Cultural Resources (TASP Policies 5.34 and 5.35)**

30. Archeological Monitoring: Any future ground disturbing activities, including grading, in the Transit Area shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines §15064.5 regarding discovery of archeological sites and burial sites, and Guidelines §15126.4(b) identifying mitigation measures for impacts on historic and cultural resources (see Public Resources Code §§21083.2, 21084.1). In the event that buried remains are encountered, work shall be halted in the immediate area and the Santa Clara County coroner and the City of Milpitas Department of Planning and Department of Building shall be immediately contacted to determine the nature of the remains and related appropriate mitigation plan. If remains are determined to be of Native American origin, the coroner will then contact the Native American Heritage Commission (NAHC), which will in turn contact the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods. **(P/B)**

31. **Paleontological Monitoring:** All grading plans for development projects involving ground displacement shall include a requirement for monitoring by a qualified paleontologist to review underground materials recovered. In the event fossils are encountered, work in the area shall be halted and the City of Milpitas Department of Planning and Department of Building shall be immediately contacted to determine the nature of the remains and related appropriate mitigation plan. A qualified paleontologist shall evaluate the fossils, and steps needed to photo-document or to recover the fossils shall be taken. **(P/B)**

## **ENGINEERING CONDITIONS**

### **PRIOR TO CONSTRUCTION PLAN SUBMITTALS**

*The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. **(E)***

32. **Modifications:** The Site Development Plan dated July 10, 2019 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
33. **Solid Waste and Recycling Handling Plan:** Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.
34. **Stormwater Control Plan:** Permittee shall submit City approved final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.
35. **Photometric Analysis:** Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Tarob Court and Lundy Place that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines.
36. **Recycle Water Cross-Connection Specialist:** In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee must hire a certified cross-connection specialist for their consultation as to irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all landscape submittal plans.
37. **Submittal Requirements:** Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.
38. **Project Job Account/Fee Deposit:** Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be determined based on the public improvement cost estimates as prepared by the Permittee's engineer.
39. **Coordination with other Projects:** Permittee shall coordinate designs with 1992 Tarob Court subdivision (E-EN18-0056) in advance prior to any plan submittal.

### **PRIOR TO FINAL MAP APPROVAL/RECORDATION**

*The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recording (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (E)*

40. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easement, public service utility easement, sanitary sewer easement and other public easement(s) deemed necessary for the project.
41. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.
42. Partial Street Vacation: This project is subject to and contingent upon partial vacation on Tarob Court and Lundy Place.
43. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map.
44. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
45. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, Comcast) for abandonment of existing and dedication of new public service utilities easements.
46. Demolition of Existing Building: Permittee shall demolish existing buildings/facilities that are in conflict with the new property lines.
47. Covenant, Conditions & Restrictions (CC&Rs): Permittee shall provide CC&Rs for City's review and approval for perpetual maintenance of private roadways, private utilities, stormwater management facilities in accordance with a separately recorded Stormwater Management Facilities Operation and Maintenance Agreement. There shall be provisions in the CC&Rs to retain a recycled water site supervisor with annual re-certification report to the City's Public Works Department.
48. Subdivision Improvement Agreement and Securities: Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).
49. Annexation to the Community Facilities District: Permittee shall submit an executed petition affirmatively consenting to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The CFD annexation process shall be completed prior to final map approval. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 14 notwithstanding.

#### **PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE**

*The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. (E)*

50. Public Improvement Design Standards: All public improvements shall be designed and constructed in accordance with all applicable public improvement design standards, including but not limited to:
  - a. Milpitas Design Guidelines: (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>);
  - b. Standard details and specifications: (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/standard-details-and-specifications/>);

- c. Transit Area Specific Plan design guidelines:  
([http://www.ci.milpitas.ca.gov/\\_pdfs/engDesignGuidelines/en\\_dg\\_vi\\_transitAreaSpecific.pdf](http://www.ci.milpitas.ca.gov/_pdfs/engDesignGuidelines/en_dg_vi_transitAreaSpecific.pdf)); and
- d. Americans with Disabilities Act (ADA) requirements, where applicable.

- 51. Sanitary Sewer Calculations: Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design, allocation of discharge for each of the lateral, and impact to the existing main. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.
- 52. Storm Drain Design: Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.
- 53. Domestic Water and Fire Service Calculations: Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.
- 54. Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.
  - a) Installation of separate water service tap and meter for each of the following services: residential, irrigation, and fire.
  - b) Installation of separate utility service lines (domestic water, fire service, sanitary sewer) for residential.
  - c) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna.
  - d) Provide 2” grind and overlay with base repair of existing asphalt pavement to the centerline of the street along the Tarob Court and Lundy Avenue project frontage to the City Engineer’s satisfaction.
  - e) Street taper design along the Tarob Court project frontage shall be to the City Traffic Engineer’s satisfaction.
  - f) Installation of new street trees along the project frontage. The locations, spacing of trees and tree species shall be in compliance with applicable City standards and details.
- 55. Abandonment of Existing City Utilities: Permittee shall cap, abandon or remove any unused existing public utilities based upon City’s Abandonment Notes and to the City’s satisfaction.
- 56. Relocation and Adjustment of Existing Public Utilities: Permittee shall relocate and/or adjust existing public utilities as needed that are in conflict with the proposed improvements.
- 57. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.
- 58. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.
- 59. Pothole Encroachment Permit: Due to multiple new utility service connections along the project frontage, Permittee shall pothole and verify all potential utility crossing conflict as part of the public improvement plan during the design stage.

60. Permittee shall relocate the existing 12" water main along the Tarob Court project frontage. The permittee shall connect the new 12" water main to the existing 12" water main at both ends per City standards and install per backbone guidelines. The existing water main shall be abandoned per the City's Abandonment Notes and to the City Engineer's satisfaction.
61. Permittee shall upsize the existing 15" storm drain to 24" HDPE from the existing manhole within the 20' Public Utility Easement as shown on parcel map in book 431 of maps at pages 2 and 3, to the point of connection on Tarob Court.
62. Permittee shall abandon and remove the existing 6" sanitary sewer line within the 20' Public Utility Easement as shown on parcel map in book 431 of maps at pages 2 and 3. Existing service to 1971 Tarob Court (APN 086-36-033) and existing sewer main within the easement downstream of said service shall remain to continue to serve 1971 Tarob Court. The Permittee shall communicate and coordinate with adjacent property owners of 1971 Tarob Court declaring work on the sanitary sewer line serving 1971 Tarob Court.
63. A new 8-inch recycled water main line shall be installed along the City's Preferred Alignment, as described below, or an alignment the City identifies as the most feasible route for the recycled water main line. The City's Preferred Alignment is, connect to the existing recycled water main line on Tarob Court extending, at a minimum, to the point of future irrigation connection for 2001 Tarob Court.

The Permittee agrees to fulfill the requirement of installing a new recycled water main line by completing one of the following options at the City's discretion:

- a. If an alignment has not been installed by another party at the time of Building Permit issuance, the Permittee and the City shall enter into a reimbursement agreement to reimburse the permittee for the design and construction of the portion of the new recycled water main line that exceeds the property frontage length of 230 linear feet.
  - b. If the recycled water main is under construction or the construction of the recycle water main has been completed, by another party, at the time of Building Permit issuance, the permittee shall pay the City for the cost of design and construction equivalent to the property frontage length, measured to be 230 linear feet. The cost of design and construction shall be based upon a licensed Civil Engineer's cost estimate, approved by the City.
  - c. If the installation of a new recycled water main line is determined to be infeasible by the City, the permittee shall pay the City for the cost of design and construction equivalent to the property frontage length, measured to be 230 linear feet for the City's use to fund the City's preferred future recycled water improvements which the City will design and install at a later time. The cost of design and construction shall be based upon a licensed Civil Engineer's cost estimate, approved by the City.
64. Permittee shall obtain approval and encroachment permit from the City of San Jose for work on the City of San Jose manhole due to realignment of the curb. Permittee shall comply with City of San Jose design requirements and submit offsite plans to the City of San Jose for their review and approval of improvements impacting City of San Jose Infrastructure.

#### **PRIOR TO BUILDING PERMIT ISSUANCE**

*The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (NOTE: Pursuant to Density Bonus approval, standard conditions regarding the reconstruction of the street and the upgrade of stormwater requirements have been requested as regulatory concessions, and therefore do not apply to this project). (E)*

65. **Final Map Recordation:** Permittee shall record the final map.
66. **Easements on the Building Permit Plans:** Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on applicable building permit plans.

67. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).
68. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department. The subject O&M Agreement shall be referenced in the CC&Rs, if applicable.
69. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.
70. Recycle Water Approval: Permittee shall use recycled water for landscape irrigation purpose, except for the interior courtyard/podium areas within the building footprint where the potable water shall be used for irrigation. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled "*Water Recycling Criteria*", CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled "*Drinking Water Supply*" and all other recycled water regulations as listed under the publication titled "*California Department of Public Health Regulations Related to Recycled Water June 18, 2014*". Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water.
71. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 (Water Efficient Landscapes) for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.
72. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc.
73. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
- What materials will be salvaged.
  - How materials will be processed during demolition.
  - Intended locations or businesses for reuse or recycling.
  - Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
- Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.
74. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.
75. Flood Plain Management: This project is in the Flood Zone "AO" with 1' average flood depth, therefore, Permittee shall comply with all applicable flood protection criterion required by the Federal Emergency Management Agency

(FEMA) and MMC Title XI, Chapter 15. Permittee shall also submit a Flood Study for the Project demonstrating, to the satisfaction of the City Engineer, that the proposed development has no adverse impact to the surrounding flood plain within the Special Flood Hazard Area (SFHA) and to the flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood Elevation (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. The study shall clearly identify the lowest floor elevation as being either the bottom of garage, bottom of first floor residential units, bottom of elevator pit, etc. and shall be completely elevated out of the SFHA.

76. Development Fees: Permittee shall pay the following development fees. The information listed in items “a” through “g” are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.

- a. Transit Area Specific Plan fee at \$32,781/unit for residential uses. Based on approval for development of 40 units, the estimated Transit Area Specific Plan Development Impact Fee for this project is \$1,311,240 (\$32,781/unit x 40 units). TASP fees shall be paid prior to Building Permit Final.
- b. Parkland:
  1. The project is required to dedicate 0.35 acres of parkland, equivalent to \$971,841.02 fees-in-lieu.
  2. The park portion of the TASP fee is valued at \$600,548, equivalent to 0.22 acres. This will be applied to the project parkland requirement.
  3. The applicant will receive credit for 0.13 acres of private recreation space on site. Upon demonstration of provision of this private recreation space to the satisfaction of the Direction of Planning or his/her designee, no additional parkland fees will be due, per table below.

2001 Tarob Court Unit Count	40
2001 Tarob Court Population Estimate	97 persons
TASP Parkland Requirement	3.5 acres/1,000 people or equivalent fees-in-lieu
<b>PARKLAND ACREAGE DUE/FEE EQUIVALENT</b>	<b>0.35 acres/\$971,841.02</b>
<b>Amount Satisfied Through TASP Fees (Acreage/Dollars)</b>	<b>0.22 acres/\$600,548</b>
<b>REMAINING DELTA TO BE SATISFIED (Acreage/Dollars)</b>	<b>0.13 acres/\$371,293.02</b>
Private Recreation Acreage Approved by City	0.13 acres
<b>TOTAL ACREAGE/FEEES PROVIDED</b>	<b>0.26 acres</b>
<b>REMAINING ACREAGE/FEE REQUIREMENT TO BE MET</b>	<b>0.0 acres/\$0</b>
<b>BALANCE OF PARKLAND ACREAGE/FEEES DUE</b>	<b>0.0 acres/\$0</b>

- c. Storm water connection fee at \$16,771/acre for residential.
- d. Water connection fee at \$1,164/unit for residential, based upon increased water usage.

- e. Sewer connection fee at \$1,406/unit for residential, based upon increased average wastewater flow.
- f. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
- g. FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each.

77. Building foundations adjacent to public utilities shall be designed to be self-supporting such that the building weight is not required to be supported during shoring and excavation of adjacent utilities. If any project building is located next to a City easement, the City is not responsible for any foundation damage that would occur due to excavating in the event of servicing or repairs in that easement.

78. All domestic, irrigation, and fire water services serving the site shall have at least a reduced pressure backflow preventer.

### **DURING CONSTRUCTION**

*The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. (E)*

- 79. Dewatering: If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
- 80. On-site Recycle Water Coordination: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling.
- 81. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.
- 82. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.
- 83. Water Shut-down Plan: Permittee shall provide a water shut-down plan at least seven days in advance of the shut-down in coordination with the Engineering Inspector, and notify affected property owners/tenants when cut-in tee(s) is/are required.

### **PRIOR TO FIRST OCCUPANCY**

*The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.*

- 84. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to frontage improvements along Tarob Court and Lundy Avenue, as shown on City approved plans.
- 85. LOMR-F: Permittee shall submit the FEMA approved LOMR-F for each unit/building associated with the requested occupancy, if project is located in the SFHA.
- 86. Elevation and/or Flood Proofing Certificate: Permittee's civil engineer shall submit Elevation and/or Flood Proofing Certificate for the lowest finished floor elevation of each building for City record.
- 87. Landscape Certificate of Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.

88. Certificate of Cross-Connection: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program <http://www.sanjoseca.gov/index.aspx?NID=1595> and forward them to the City.
89. Record Drawings: Permittee shall submit record drawings in AutoCAD, Tiff, and PDF formats for City records. Record drawings shall include all public improvements. Additionally, if the project uses recycled water, the permittee shall also submit record drawings of on-site irrigation facilities.
90. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.
91. Backflow Devices: All backflow preventer devices shall be tested by a certified backflow tester, and results of the test shall be submitted to the City before going into service.

## **FIRE CONDITIONS**

*The plans approved by City Council are **not** building plans and have not been reviewed nor approved for conformance to the California Building Code (CBC), California Fire Code (CFC) and the Milpitas Municipal Code (MMC). Do not consider the plan set approved by City Council as final building plans approved by the Fire Department. Building plans **must** be submitted for review and approval before construction is to commence. The following notes are a general list of the applicable code requirements (2016) and are provided to assist with the building permit process. Please note that these are not all inclusive. All applicable Building, Fire and Municipal Code requirements must be met in advance of any building permit approvals or related construction. Note, Jan. 01, 2020, new CA Building Codes go into effect.*

92. Technical Assistance: To determine the acceptability of technologies, processes, products, facilities, materials, and uses attending the design, operation or use of a building or premises subject to inspection by the Fire Code Official, the Fire Code Official is authorized to require the owner or agent to provide, without charge to the jurisdiction, a technical opinion(s), plan review(s) and/or report(s). CFC Section 104.7.2
93. Electronic documents: The Fire Code Official may require electronic base documents for all construction documents and operational permits. The Fire Code Official shall designate the software base format for the electronic documents. CFC Section 105.4.2.2, added by MMC Section V-300-2.11
94. Fire Department Emergency Key Box (aka: Knox Box, Knox Locks, Knox Electric Switches, etc.): The Fire Code Official is authorized to require a key box(es) to be installed in an approved location(s) if necessary for life-saving or fire-fighting purposes. Quantity and location shall be as directed by the Fire Code Official. CFC Section 506. In addition to the building, locked mechanical closets, fire alarm closets, sprinkler riser closets, etc. may need a Fire Dept. approved "Knox" key box.
95. Emergency Responder Radio: A Fire Department approved emergency responder radio coverage system shall be provided. CFC Section 510, MMC V-300-2.57
96. Standby Power for Elevators. Elevators shall be provided with standby power. CFC Section 1009.4
97. Two Way Communication. A two-way communication system complying with Sections 1009.8.1 and 1009.8.2 shall be provided at the landing serving each elevator or bank of elevators on each accessible floor that is one or more stories above or below the level of exit discharge. CFC Section 1009.8
98. Fire Safety: Fire safety during construction, alteration or demolition of the building shall meet the requirements of Chapter 33 of the California Fire Code and the Standards for Construction Site Fire Safety (un-024) by "unidocs"

organization (<http://www.unidocs.org>). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. CFC Chapter 33

99. Access Control Devices: When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the Fire Code Official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. CFC Section 504.6, added by MMC Section V-300-2.51
100. Fire Department Access: Fire Department apparatus and staff access shall be provided to all buildings and site. Detailed review will be done during construction permit process. CFC Section 503
- a. Minimum Number of Fire Apparatus Access Points: A Minimum of two independent and approved (approved by the Fire Code Official) means of fire apparatus access shall be provided for the site. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760 m<sup>2</sup>) shall be provided with at least two means of fire apparatus access for each structure. International Fire Code, Section D104.1, adopted and amended by MMC V-300-2.143
  - b. Turning Radius: Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (center). CFC Section 503.2.4
  - c. Fire Apparatus Clearance: Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105.2, adopted and amended by Milpitas Municipal Code. MMC V-300-2.142 and 2.145
  - d. Timing of Installation and Serviceability of Fire Protection Elements: When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed (paved, or other acceptable Fire Department roads that are weather resistive and able to meet the fire apparatus requirements). CFC Section 501.4
  - e. Fire Apparatus Access: Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided.
  - f. Adjacent Access Rights: No source of access from lands adjoining a property to be developed shall be considered fire apparatus access roads, unless there is obtained the irrevocable and unobstructed rights and recorded as an ingress/egress access easement with the Country of Santa Clara. CFC Section 503.7, added by MMC V-300-2.48
  - g. Fire Access Road Materials and Load Bearing Requirements: Fire access roads shall be paved (concrete and/or asphalt cement, or other concrete type pavement approved by the Fire Dept.). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division for specifications. CFC Section 503.2.3
  - h. Obstruction of Fire Access: Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4
  - i. Emergency Vehicle Access (EVA): EVA roads, when required, shall meet the fire department site access requirements. CFC Section 503.
  - j. Marking of Fire Access Roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is

clearly marked the words "FIRE LANE". CFC Section 503.3. Minimum marking shall be pole signage and red curb with "FIRE LANE" stencil. Signage and red curbs shall be done throughout and as needed to clearly identify the no parking zones.

Minimum marking shall be (1) pole signage and (3) red curb with "FIRE LANE – CVC 22500.1" stencil.

- k. Buildings with Courtyards. Fire access shall be provided to enclosed courts for firefighting and rescue operations. Each court shall be designed to provide readily accessible method of bring a fire department ground ladder (36' long) into the courtyard. Please anticipate and accommodate personnel carrying ladder. CFC Section 102.9
- l. Building Setbacks: Building/structure set back, proximity to fire access roads. At least one of the required access routes meeting the Fire Dept. conditions shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to the entire side of the building. 2016 International Fire Code, Section D105.3, adopted by MMC Section V-300-1.01
- m. Site Design Changes: The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.

101. Fire Protection Water Supply (Hydrants, On-site and/or Public): An approved water supply (hydrants on-site and/or public) capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Water supply shall meet the Fire Code and the City of Milpitas Engineering Division water supply guidelines and the CFC Section 507, Appendix B and Appendix C. Note, the Civil plans submitted under this Planning review are not approved for construction.

- a. Water System Calculations: Private fire service mains and appurtenances shall be designed and installed in accordance with the City of Milpitas Engineering design guideline requirements and the NFPA 24. Design calculations and all the necessary design information for the water system to meet the domestic and fire flow requirements as per the City of Milpitas Engineer Division water design requirements shall be provided as part of the construction permit process. CFC Section 507.

The minimum water flow at the worst case hydrant outlet within the private system shall be not less than 3,000 gpm.

- b. Fire Hydrant Location: The location and quantity of hydrants will be evaluation during the construction permit process. This applies to the on-site private streets as well as to the public streets. CFC Section 507.5
- c. Hydrant for Automatic Fire Sprinkler/Standpipe Systems: Buildings equipped with an automatic fire sprinkler system and/or a standpipe system installed in accordance with Sections 903 and or 905 shall have a fire hydrant within 50 feet of the fire department connections. CFC Section 507.1.1, amended by MMC Section V-300-2.53
- d. Private Hydrant Requirements: Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color. CFC Section 507.5.7, added by MMC V-300-2.54.
- e. No Parking in Front of Hydrants: No parking is permitted in front of fire hydrants. Hydrants located on streets (Public or Private Street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514

102. Automatic Fire Sprinkler System for Structures:

- a. Automatic Fire Sprinkler. The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 Standards. Note, system type will depend on building/structure "construction type" analysis. California Fire Code Section 903
- b. Sprinkler Valves: All valves controlling the water supply for the automatic sprinkler system shall be electrically supervised by a listed fire alarm control unit. CFC 903.4
- c. Fire Riser Location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.65

- d. Sprinkler Design. Hydraulic design for the automatic fire sprinkler system shall provide a minimum of 20% safety margin. CFC Section 903.3.5.6, MMC V-300-2.68

103. Requirements for Fire Service Water Laterals for Building Sprinkler Systems: Each building shall have a fire service water laterals for the automatic fire sprinkler system and shall meet the California Fire Code requirements Chapter 9 and the NFPA applicable Standards. Note that the utilities drawings provided are not reviewed nor approved for construction. CFC Section 912.1

- a. FDC/PIV (fire department connection/post indicating valve) Location(s). The location of the fire department FDC's/PIV's shall be at a readily visible and accessible location off the fire access road and approved by the Fire Code Official. FDC's/PIV's shall not be located behind parking stalls nor behind any other obstruction. Final review for location for the FDC's/PIV's will be conducted during the construction permit process. CFC Section 912.2
- b. FDC/PIC Signage. A metal sign with raised letters at least 1 inch in size shall be mounted on all fire department connections. Signage shall be reflective, weather resistive and approved by the Fire Code Official. CFC Section 912.5
- c. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Section 903 and or 905 of the CA Fire Code shall have a fire hydrant within 50 feet of the fire department connections. CA Fire Code Section 507.5.1.1 Added by MMC V-300-2.53
- d. Fire Service Water Lines: Service water supply laterals for the sprinkler systems and the on-site fire hydrants shall be independent of each other. NFPA 13, Chapter 24
- e. Backflow Protection. Potable water supply to the automatic sprinkler and/or the standpipe systems shall be protected against backflow as required by the Health and Safety Code section 13114.7 and the City of Milpitas Utilities Engineering Division. CFC Section 912.6
- f. Water Drainage. All new installations of sprinkler systems shall preclude sprinkler test and system drain water from discharging into the storm drain; provisions to direct water to the sanitary sewer or landscape or other approved means shall be provided. Sprinkler system design shall include the proposed method for drainage of sprinkler system discharge. Storm Water Pollution Regulations.

104. Fire Alarm System, R-2 Occupancy: A fire alarm system and smoke alarms shall be installed in Group R-2 Occupancies as required in Sections 907.2.9.1 through 907.2.9.4. CFC Section 907.2.9

CFC Section 907.2.9.1 - Manual Fire Alarm System

CFC Section 907.2.9.2 - Smoke Alarm (in accordance with 907.2.11)

- a. Manual Fire Alarm System: A manual fire alarm system that activated the occupant notification system in accordance with Section 907.5 shall be installed in Group R-2 occupancies. CFC 907.2.9.1
- b. Smoke Alarm, R-2 Occupancy: R-2 Occupancy, listed single and multiple-station smoke alarms complying with UL217 shall be installed in accordance with Sections 907.2.11.2 through 907.2.11.6 and the NFPA 72. CFC Section 907.2.11
- c. Visible Alarm Notification: For Group R-2 required by Section 907 to have a fire alarm system, all dwellings units and sleeping units shall be provide with the capability to support visible alarm notification appliances in accordance with NFPA 72. CFC 907.5.2.3.3
- d. Fire Alarm Zones: Fire alarm system(s) shall be zoned as per the requirements of the CFC Sections 907.6.3 and 907.6.4.
- e. Fire Alarm Panel: Fire alarm panel (or fire alarm annunciator panel) shall be located in a readily accessible location and shall be provided with the necessary access and working clearance as required by the CA Electrical Code. CFC Section 907.6.4.1.1
- f. Fire Alarm Monitoring: Fire alarm monitoring (approved supervising station - UL, or FM approved). Fire alarm systems required by the Fire Code or by the California Building Code shall be monitored by an approved supervising station in accordance with the NFPA 72. CFC Section 907.6.6

105. Building/Structure Other Requirements:

- a. Stairs to Roof: All stairs shall run up to the roof. The fire code official shall determine the required number and location of stairway(s) to the roof. CFC Section 504.3.1, MMC Section V-300-2.49

- b. Roof stairs. When there are roof planes with vertical difference of more than 24" there shall be stairs for access between the different roof planes. The Fire Code Official shall determine the location for the stairs. CFC Section 102.9
- c. Roof Guardrails at Interior Courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through. CFC 316.7, added by Milpitas Municipal Code V-300-2.45

Exception: Where the roof opening is greater than 600 square feet in area.

- d. Premises Identification: New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505. The Fire Dept. may require the installation of address numbers at multiple building locations. CFC Section 102.9
- e. Address Illumination: All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.52.
- f. Medical Service Elevators. All new passenger service elevators shall meet the medical service elevator requirements in the California Building Code, 2016 Edition, Chapter 30. CFC Section 607.1.1, MMC V-300-2.59
- g. Standpipe System: Standpipe system shall be installed in accordance with the California Fire Code Section 905.2 and NFPA 15. When stairs are provided with intermediate landings, the standpipes shall be located at the bottom floor level, at the top floor level and at all intermediate landings. CFC Section 905.4
- h. Portable Fire Extinguishers. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.

106. Electrical Generators:

- a. Fuel tank(s) located below grade shall be considered underground tanks in accordance with the California code of Regulations, Title 23, Division 3, Chapter 16 (State Underground Tank Regulations).
- b. If the fuel tank system(s) is not to be considered an underground tank, as defined by the underground tank regulations, provide documentation demonstrating compliance with the specified State Water Resource Control Board's Guidance letter LG-165-2.
- c. Construction drawings, for the fuel tank, shall be submitted to the City for compliance with the California Fire Code Chapters 27 and 34.

107. Landscape sheets: The proposed landscaping may be impacted by the comments above and the requirements for fire access, fire systems and devices (such as apparatus access, hydrants, fire service lines, fire department connections valves, etc.). The Fire Dept. reserves the right to relocate, delete or change the proposed landscaping when in conflict with fire systems and devices. CFC 507.5.4.

108. Plan Submittal: Complete plans and specifications for all aspects of fire protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2

## BUILDING CONDITIONS

### General

109. Applicable Codes: Applicable codes shall be 2016 California Building Code (CBC), California Mechanical Code (CMC), California Electrical Code (CEC), California Plumbing Code (CPC), Green Building Standards Code (CalGreen), California Energy Code (CEnC) and 2017 Milpitas Municipal Code (MMC).

110. Build It Green/LEED Requirement: Residential portion of the building shall meet Build It Green 50 Green Points or LEED for Homes Certified threshold per MMC sec. II-20-3.01.
111. Licensed Engineer/Architect: Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for a building permit.
112. Application for New Building Address: Applicant shall apply for new building addresses prior to submitting for a building permit.
113. Occupancy Group Designations: Apartment/Condominium building shall be classified as Group R2 Occupancy per CBC sec. 310 and private garages not exceeding 1,000 square feet as Group U Occupancy per sec. 312. Each private garage shall be separated from other private garage by 1 hr fire barriers and/or 1 hr horizontal assemblies per CBC sec. 406.3.1. Multiple private garages not separated by fire barriers shall be classified as Group S-2 Occupancy per sec. 311.
114. Fire Rating for Apartment Buildings: Apartment/Condominium buildings over 2 stories high shall be one-hour fire-rated minimum (Type V-A) when allowable area increase with sprinkler is used per CBC Table 504.4.
115. Allowable Building Area: Allowable building area for the building shall be as per CBC Table 506.2.
116. Exterior Wall Openings: The maximum area of protected and unprotected openings in exterior walls shall comply with CBC sec. 705.8.
117. Separating Units Requirements: Wall and floor separating units in the same building and separating units from other occupancies are required to be one-hour fire resistive construction per CBC sec. 420, 708 and 711.
118. Apartment Building Considered Separate and Distinct: Apartment/condominium building shall be considered as separate and distinct buildings for the purpose of determining area limitations, continuity of fire walls, limitation of number of stories and type of construction where it is separated from Group S-2 garage by 3-hour fire rated horizontal assembly, garage is not more than one story above grade and of Type I-A construction as per CBC sec. 510.2.
119. Required Separation in Residential Building: Required separation in buildings between dwellings and private garages shall be as per CBC sec. 420.2 and 420.3.
120. Required Separation in Residential Building: Required separation in buildings with mixed occupancies shall be per CBC sec. 508
121. Corridor Fire Rating: Corridor with occupant load over 10 shall be one-hour rated with 20-minute doors leading to it per CBC sec. 1020.1.
122. Minimum Number of Exits: Minimum no. of exits shall be provided per CBC Table 1006.3.1 and the exits provided shall comply with CBC sec. 1022 through 1027. The required number of exits from any story shall be maintained until arrival at grade or public way per CBC sec. 1006.3.1. Elevator shall not be used as a component of a required means of egress per CBC sec. 1003.7, except elevators are used as an accessible means of egress in accordance with sec. 1009.4.
123. Required Egress: At least one required accessible means of egress shall be an elevator complying with CBC sec. 1009.4 in buildings where a required accessible floor is four or more stories above or below a level of exit discharge per sec. 1009.2.1.
124. Two-Way Communication System: Two way communication system is required at elevator landing on each accessible floor that is one or more stories above or below the story of exit discharge per CBC sec. 1009.8.

125. Exit Stair Enclosures: Exit stair enclosures shall not provide exit through corridor as per CBC sec. 1022.1, but shall extend to exterior of the building with an exit passageway.
126. Mezzanines: Mezzanine in the upper units shall be considered a story if it does not meet requirements of CBC sec. 505.2
127. Carbon Monoxide/Smoke Detectors Required: In the dwelling units, provide carbon monoxide detectors and smoke detectors per CBC sec. 915 and 907.2.11.
128. Escape Window Location: Escape bedroom windows below the 4<sup>th</sup> floor shall open into a public street, yard or exit court that opens to a public way as per CBC sec. 1030.1.
129. Exit Courts: Exit from exit courts shall not reenter exit access as per CBC sec. 1028.1 and sec. 1028.5
130. Exit Courts: Required exit courts to which escape bedroom windows open, shall be provided with exiting as per CBC sec. 1028.1.
131. Elevator Enclosure: Elevator shall be enclosed in a shaft enclosure per CBC sect. 713.2 and 713.4.
132. Elevator Hoistway Opening: Elevator hoistway opening shall be protected and enclosed within a shaft enclosure per CBC 3006.2 and 712.1.1.
133. Elevator Hoistway Door Opening: Elevator hoistway door opening shall be protected per CBC 3006.3.
134. Elevator Lobby Sign: Elevator lobby identification signs shall be provided at any door with direct access to an enclosed elevator lobby at landings in interior exit stairways where two or more doors lead to the floor level per CBC 1023.10.
135. Interior Stairway Enclosure: Interior stairway shall be enclosed per CBC sec. 1023.2.
136. Roofing Material: Roofing material shall be as per CBC Table 1505.1.
137. Exit Doors: Doors in a room with occupant load of 50 or more persons shall swing in the direction of exit per CBC sec. 1010.1.2.1. Exit doors from assembly occupancy shall be provided with panic hardware per sec. 1010.1.10.
138. Exit Signs: Provide exit signs and tactile exit signs when two exits are required per CBC sect. 1013.1 and 1013.4.
139. Building Occupancy Frontage: Buildings that house Group A Occupancy shall front directly on or discharge to a public street not less than 20 feet in width per sec. 1029.2 and 1029.3. The main entrance to the building shall be located on a public street or on the exit discharge.
140. Occupant Load: Occupant load factor for assembly and multi-use room without fixed seats, including clubhouse, common use deck area, courtyard, etc., shall be 1 occupant per 7 sq. ft per CBC Table 1004.1.2.
141. Exit Enclosure: Exit enclosure in building less than four stories in height shall be one-hour fire-resistive construction per CBC sec. 1023.2.
142. Exit Enclosure: Exit enclosure in building four or more stories in height shall be two-hour fire-resistive construction per CBC sec. 1023.2.
143. Stairways: In buildings four or more stories in height, one stairway shall extend to the roof surface through a penthouse complying with CBC sec. 1510.2, unless the roof has a slope steeper than 4:12 per CBC sec. 1011.12. In buildings without an occupied roof, access to the roof shall be permitted to be a roof hatch or trap door not less than 16 sq ft with a min. dimension of 2ft and accessed by an alternating tread device, ship ladder or a permanent ladder.

144. Exterior Openings: Exterior openings required for natural light shall open directly onto a public way, yard or court as set forth in CBC sec. 1205.1.
145. Egress Balconies: Egress balconies shall comply with CBC sec. 1021.
146. Egress Courts: Egress courts shall comply with CBC sec. 1028.4.
147. Acoustical Report: Provide acoustical report to determine sound insulation requirements for at least exterior walls. Interior sound insulation shall be as per CBC sec.1207 or as per acoustical report.
148. Ventilation Requirements for Dwelling Units with Non-Openable Windows: Dwelling units, which has non-openable windows as required by acoustical report shall be provided with mechanical ventilation per CBC sec. 1203.1 and CMC sec. 402.3. As per City policy BDP-ME05, City does not allow the use of exhaust only fans to achieve the fresh outside air requirement through infiltration.
149. Ventilation Requirements for Studio Units: In studios, natural light and ventilation for sleeping areas shall meet requirements per CBC sec.1203.5 and sec.1205.2. Any room is permitted to be considered as a portion of an adjoining room for natural lighting and ventilation purpose where the common wall is open and unobstructed and provides an opening of not less than 1/10 of the floor area of the interior room and not less than 25 square feet per CBC 1205.2.1.
150. Electric Vehicle Charging Stations Requirement: Where 17 or more multifamily dwelling units are constructed on a building site, 3% of the total number of parking spaces provided for all types of parking facilities, but no less than 1, shall be electric vehicle charging stations (EVCS) capable to supporting future electric vehicle supply equipment per CalGreen sec. 4.106.4.2.
151. Electric Vehicle Charging Stations Location: At least one EVCS shall be located in common use areas and available for use by all residents per CalGreen sec. 4.106.4.2.1. Per City Policy No. BDP-BLG17 and CalGreen sec. 4.106.4.2.2, one in every 25 EVCS, but no less than 1, shall be accessible and located on an accessible route. Accessible EV charging parking space shall not be counted as one of the required accessible parking spaces as required by CBC, because the space is allowed to be used by non-disabled people.
152. Solar Ready Requirement: The buildings shall comply with solar ready requirements per CEnC 110.10.
153. Mechanical Duct Location: No mechanical duct shall penetrate exterior walls unless approved by Planning Division.
154. Balconies, Landings and Decks: Balconies, landings, decks, stairs and similar floor projections exposed to the weather shall comply with City Policy No. BDP-BLG40:  
[http://www.ci.milpitas.ca.gov/\\_pdfs/BLG40\\_RequirementsforConstructionofBalconies.pdf](http://www.ci.milpitas.ca.gov/_pdfs/BLG40_RequirementsforConstructionofBalconies.pdf).

## **ACCESSIBILITY**

155. Site Accessibility Plan: Provide site accessibility plan.
156. Group U Private Garages: Group U private garages, which are accessory to covered multifamily dwelling units shall be accessible as required in CBC sec. 1109A
157. Accessible Parking Provided: People with disabilities accessible parking shall be provided per CBC sec. 1109A.3 (2% shall be accessible of the covered dwelling units). Signage is not required.
158. Accessible Parking Required: Each type of parking shall be accessible as per CBC sec. 1009A.3 and 1009A.4.

159. Accessible Assigned Parking Requirement: If assigned parking spaces are provided for residents, at least 2% of the assigned parking spaces shall be accessible in each type of parking facility per CBC 1109A.4.
160. Accessible Visitor Parking Requirement: If unassigned or visitor parking is provided, a minimum of 5% parking stalls shall be accessible and shall be provided with signage as per CBC sec. 1009A.5.
161. Accessible Parking Location: Accessible parking spaces shall be dispersed and located closest to the accessible entrances and elevators per CBC per sec.1009A.7.
162. Accessible Parking Location: Accessible parking spaces shall be located so that persons with disabilities is not compelled to walk or wheel behind parked cars other than their own as per sec. 1109A.7.
163. Van Accessible Parking for Resident and Guest: One in every eight accessible parking spaces for resident and guest parking shall be “Van accessible”, but not less than one per CBC sec. 1109A.8.6.
164. Van Accessible Parking for Public Parking: One in every six accessible parking spaces for public parking (e.g. retail space or leasing office, etc.) shall be “Van accessible”, but not less than one per CBC sec. 11B-208.2.4.
165. Accessible Routes of Travel: An accessible route of travel shall be provided to all accessible building entrances. At least one accessible route shall be provided from public transportation stop, accessible parking and public street to building entrance per CBC sect. 1110A.1. When more than one route is provided, all routes shall be accessible.
166. Accessibility Signs: Accessibility signs shall be provided at every primary public entrance and at every major junction along or leading to an accessible route of travel and at building entrance that are accessible per CBC, sec. 1110A.2
167. Accessible Access: All primary entrances and required exit doors to building and facilities shall be accessible to people with disabilities per CBC, sec. 1117A.2.
168. Egress Clearance: Exit stairways considered as an accessible means of egress shall be min. 48” clear width between handrails and provided with the area of refuge per CBC sec. 1009.3 unless building is provided with approved automatic fire sprinkler system.
169. Egress Elevator: At least one accessible means of egress shall be an elevator per CBC sec. 1009.2.1 unless building is provided with approved automatic fire sprinkler system and horizontal exit at each floor and approved by Fire Department to exempt this requirement.
170. Accessible Elevators: All elevators shall be accessible per CBC sec. 1124A and at least one shall be medical emergency service elevator as per sec. 3002.4a.
171. Parking Structure Clearances: All entrances to and vertical clearances within parking structures shall have a minimum of 8 feet 2 inches where required for persons with disabilities per CBC sec. 1109A.8.1.
172. Accessible Means of Egress: Each accessible portion of the space shall be served by accessible means of egress in at least the same number as required by CBC sec. 1006.2 or 1006.3 per sec. 1009.1.
173. Areas of Refuge: Areas of refuge shall be provided with a 2-way communication system between the area of refuge and a central control point per CBC sec. 1009.6.3.
174. Two-Way Communication System: 2-way communication system shall be provided at each elevator landing serving each accessible floor per CBC 1009.8.

175. Accessible Elevators: All elevators shall be accessible as per CBC sec. 1124A, except private elevators serving one dwelling unit.
176. Medical Emergency Service Elevators: All elevators in buildings four or more stories in height (including private elevator) shall be provided with not less than one medical emergency service to all landings meeting the provisions of CBC sec. 3002.4a.
177. Elevator Emergency Operation: If an elevator is considered as part of an accessible means of egress, it shall comply with the emergency operation, signaling device and standby power requirements and shall be accessed from an area of refuge per CBC sec. 1009.4.
178. Accessible Bathing and Toilet Facilities: Bathing and toilet facilities within covered multifamily dwelling units shall comply with CBC sec. 1134A.
179. Maneuvering Clearance: Provide maneuvering clearance at all interior doors per CBC sec. 1132A.5 and at entrance doors and exit doors per CBC sec. 1126A.3.
180. Accessible Kitchens: Kitchens within covered multifamily dwelling units shall comply with CBC sec. 1133A.
181. Bread Board Clear Space: Where bread board is provided in lieu of 30" work surface per CBC 1133A.4 exception, clear floor space shall be provided at each bread board and the clear floor space shall extend min. 19" into the knee and toe space per CBC 1133A.7.
182. Accessible Entrance: Covered multifamily dwellings served by an elevator, including private elevator, shall be designed and constructed to provide at least one accessible entrance on an accessible route per CBC sec. 1106A.1 and the units shall be adaptable and accessible into and throughout the dwelling unit as provided in Division IV per CBC sec. 1128A.
183. Multistory Dwelling Units Without Elevators: Multistory dwelling units without elevator shall comply with CBC sec. 1102A.3.1

## **PUBLIC AND COMMON AREA**

184. Accessible Public-Use Areas: Public-use areas shall be accessible per CBC Ch. 11B and common-use areas for residents and their guests shall be accessible per CBC sec. 1127A.
185. Accessible Common Facilities: Fitness center, swimming pools and all common facilities shall be fully accessible to people with disabilities per CBC sec. 1102A.4, sec.1141A and sec.1127A.

## **ENGINEERING**

186. Storm Drain and Sanitary Sewer System: Storm drain and sanitary sewer system shall be gravity system without use of mechanical device.
187. Utility Lines: No utility lines shall cross property lines unless an easement agreement between the properties are recorded with the County and shall be submitted as part of the submittal documents and noted on the plans.
188. Soil Report: A soil report shall be provided when applying for grading, site improvement and building permit.
189. Paving: Paving of driveways and parking lot shall comply with MMC sec. II-13-18.
190. Concrete Flat Work: All non-structural concrete flat work shall be as per MMC sec. II-13-17.05.

191. Erosion and Sediment Control Plan: Erosion and sediment control plan shall be submitted when applying for grading permit as per MMC sec. II-13-10.
192. Recordation of Easements: Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. The developer shall include interim erosion control provisions and schedules in the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained as per MMC sec. II-13-11.

#### **ELECTRICAL**

193. New Electrical Services: All new electrical services shall be underground per MMC sec. II-6-2.02.
194. Building Main Services Disconnect: The building main services disconnect shall be located on the first floor level of the building per MMC sec. II-6-2.03.
195. Grounding System: Grounding system shall comply with MMC sec. II-6-2.04.

#### **STRUCTURAL**

196. Structural Design Calculations: Provide two complete sets of structural design calculations (vertical and lateral) and five sets of construction plans and details when applying for a building permit. Plans and calculations shall be wet signed and stamped by Civil/Structural Engineer.

#### **LEGEND**

**P = Planning Department**

**B = Building Department**

**E = Engineering Department**

**F = Fire Department**

**CAO = City Attorney's Office**

**ALL = All Reviewing Departments**

#### **NOTICE OF RIGHT TO PROTEST**

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

#### **AGREEMENT**

*Permittee/Property Owner*

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the Project property on the terms and conditions set forth in this resolution.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

**EXHIBIT 2**

**ADDENDUM TO THE TRANSIT AREA SPECIFIC PLAN ENVIRONMENTAL IMPACT  
REPORT**



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Conduct a Public Hearing and Introduce Ordinance No. 38.839 Amending Milpitas Municipal Code Title XI (Zoning, Planning and Annexation), Chapter 10 (Zoning) Relating to Massage Establishments</b>
<b>Category:</b>	Public Hearings-Community Development
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	<b>Rozalynne Thompson, Senior Planner, 408-586-3278</b>
<b>Recommendation:</b>	<ol style="list-style-type: none"><li>1) Conduct a public hearing and move to close the hearing following comments.</li><li>2) City Attorney shall read aloud title of Ordinance No. 38.839.</li><li>3) Move to waive the first reading beyond the title and introduce Ordinance No. 38.839 amending Milpitas Municipal Code, Title XI (Zoning, Planning and Annexation), Chapter 10 (Zoning) relating to massage establishments</li></ol>

### **Background:**

Jurisdictions throughout the state have been updating their massage ordinances to reflect the new State requirements of Assembly Bill (AB) 1147 and AB 2194 and to ensure that massage establishments are properly regulated. In Milpitas, amendments to the massage regulations in Title III, Chapter 6 ("Massage Establishments and Practitioners") in the Milpitas Municipal Code (MMC) were adopted on September 19, 2019. Planning Department staff has drafted companion amendments to Title XI, Chapter 10 ("Zoning") to ensure internal consistency within the Municipal Code and to comply with State law.

The amendments were introduced to the Planning Commission for their consideration and recommendation to City Council on October 23, 2019. The Planning Commission voted 6-0 (Commission Mandal absent) to pass a resolution to recommend that City Council adopt the amendments and suggested that staff add to the draft ordinance a parking requirement for massage businesses conducted in open areas, such as chair massage businesses. The parking requirement for massage businesses conducted in open areas has been included in the draft ordinance, which is Attachment A to this report.

### **Analysis:**

Considering the recent changes to State law and the update to Title III, Chapter 6 ("Massage Establishments and Practitioners"), Planning Division staff proposes the following changes to the Zoning Code to modify the regulations related to massage establishments.

### **Amend Definition of "Massage Establishment" and Add Definition of "Massage Establishment, Accessory" from Subsection XI-10-2.02 "General Definitions"**

Subsection XI-10-2.02 "General Definitions" of the Zoning Code lists and defines general terms and phrases of terms found throughout the zoning code. To ensure internal consistency between Title III, Chapter 6 ("Massage Establishments and Practitioners") and the Zoning Code, the current definition of "Massage Establishment" has been amended to reflect the definition found in Subsection III-6-2(k) of the MMC. Given that "Massage Establishment, Accessory" has been added as new use classification, a definition has been added to Subsection XI-10-2.02 "Definitions."

**Amend Use Tables in Section 5 (“Commercial Zones and Standards”), Section 6 (“Mixed Use Zones and Standards”), and Section 12 (“Overlay Districts and Standards”)**

Currently, massage establishments are listed in the land use tables in Section 5 (“Commercial Zones and Standards”), Section 6 (“Mixed Use Zones and Standards”), and Section 12 (“Overlay Districts and Standards”). Massage establishments are permitted in the C2, HS, TC, MXD, MXD2, MXD3 zoning districts, subject to a Conditional Use Permit granted by Planning Commission.

This zoning text amendment would amend the use tables by adding a new use classification, accessory massage establishments. It would confer review authority of massage establishments to the Zoning Administrator through a Minor Conditional Use Permit process instead of a Conditional Use Permit granted by the Planning Commission and grant review authority of accessory massage establishments, which are incidental in nature, to Planning Department staff through the Minor Conditional Use Permit process. Further, a footnote has been added to all tables to emphasize that regulations in the land use tables supplement those under Title III, Chapter 6 (“Massage Establishments and Practitioners”) and indicate that specific development standards for massage establishments can be found in Subsection XI-10-13.16 “Massage Establishments.”

**Delete “Accessory Uses” in Subsection XI-10-6.02(A)(2) and Subsection XI-10-13.03 of the Zoning Code**

Subsection XI-10-6.02(A)(2) and Subsection XI-10-13.03 of the Zoning Code allow “massage services” as accessory uses to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facility, and accredited schools, colleges, and universities. Moreover, Subsection XI-10-6.02(A)(2) and Subsection XI-10-13.03 of the Zoning Code allow permitted or conditionally permitted beauty salons, barbershops, or and healing art practices to perform massages limited to the head, neck, shoulders, hands, and feet.

Staff recommends deleting Subsection XI-10-6.02(A)(2) and Subsection XI-10-13.03 of the Zoning Code for several reasons. First, the term “massage services” is not defined in the Zoning Code. Second, the exemption is only found in Subsection XI-10-6.02(A)(2) Section 6 “Mixed Use Zones and Standards” and Section 13 “Special Uses” and not in other sections of the Zoning Code, which implies that the exemption only applies to facilities located in mixed-use districts and not located in commercial or overlay districts. Moreover, Subsection XI-10-6.02(A)(2) and Subsection XI-10-13.03 of the Zoning Code do not clearly distinguish between an exemption for facilities with a “massage services” accessory use and an exemption for the performance of massage by beauty salons, barbershops or healing arts practices. Finally, massage establishments incidental to a primary use are not clearly excluded from the exemptions in Subsection XI-10-6.02(A)(2) and Subsection XI-10-13.03 of the Zoning Code.

For clarification, staff has defined and introduced an “accessory massage establishment” use classification to Section 5 (“Commercial Zones and Standards”), Section 6 (“Mixed Use Zones and Standards”), and Section 12 (“Overlay Districts and Standards”). Further, staff has enumerated the specific facilities and professions exempted from the massage establishment regulations in the added Subsection XI-10-13.16(C)(3). The exemptions are consistent with those found in Title III, Chapter 6 (“Massage Establishments and Practitioners”). As explained above, “accessory massage establishment”, a use operated by a massage technician incidental to a primary use, would be subject to the Minor Conditional Use Permit process, while massage performed by the facilities and professions enumerated in Subsection XI-10-13.16(C)(3) of the Zoning Code would be exempted from the massage regulations.

**Amend Section 13 (“Special Uses”) to Include “Massage Establishments” as a Prohibited Use in Subsection XI-10-13.05(B)(9) “Home Occupations” and Amend Subsection XI-10-13.12(E)(1)(d) “Live-Work**

Subsection XI-10-13.05(B)(9) “Home Occupations” lists certain uses as prohibited home-based business because such uses would potentially change the residential character of a residential use. Given that in-home massage establishments would require client visits akin to medical offices, which are already prohibited by Subsection XI-10-13.05(B)(9), and could be a subterfuge for illicit conduct, such as prostitution and human trafficking, staff proposes to add “massage establishments” to those uses prohibited as home occupations. Staff also proposes to amend Subsection XI-10-13.12(E)(1)(d) “Live-Work” to add the word “establishments” to “massage” for clarification.

### **Amend Section 13 (“Special Uses”) to Add Subsection XI-10-13.16 “Massage Establishments”**

Currently, the land use regulations related to massage establishments are found in various sections throughout the Zoning Code. As part of this Zoning Text Amendment, staff proposes to create a new Subsection “Massage Establishments” to specify zoning standards for massage establishments in a centralized location in the Zoning Code. Subsection XI-10-13.16 lists and defines terms material to the implementation of the Subsection. The Subsection also enumerates the facilities and classes of individuals exempted from the massage establishment regulations. Furthermore, the proposed ordinance requires massage establishments to obtain Massage Establishment Permits from the Police Department under Title III, Chapter 6 (“Massage Establishments”) prior to approval of a Minor Conditional Use Permit issued by the Zoning Administrator, or, in the case of an accessory massage establishment, a Minor Conditional Use Permit from staff. It also limits operating hours from 7:00 a.m. to 10:30 p.m., requires one parking space per massage technician plus one parking space per treatment room, limits the location of off-premises massage services, and outlines the application procedures for massage establishments and accessory massage establishments.

### **Amend Section 53 (“Off-Street Parking Regulations”) to Include Parking Requirements for Massage Establishments**

Currently, the Zoning Code is silent with respect to parking requirement for massage establishments. Based on a survey of cities with parking requirements for massage establishments, staff recommends that the parking requirements for massage establishments is two parking spaces per treatment room. In the instances where there is no treatment room, the number of parking spaces is one space for every two massage chairs or tables. Staff also recommends amending Table 53.09-1 “Number of Parking Spaces Required” of the MMC is to include the parking requirement.

### **Nonconforming Massage Establishments in the C1 Zoning District**

In 2008, the State legislature enacted Senate Bill 731 (SB 731), also known as the Massage Therapy Act. While SB 731 established a voluntary certification process through the California Massage Therapy Council (CAMTC) for massage practitioners, it also restricted local land use control over massage establishments. Enacted in 2011, Assembly Bill 619 (AB 619) further limited local land use control by classifying massage establishments that only employed CAMTC-certified massage therapists as professional service businesses and precluding local governments from imposing stricter restrictions on massage establishments than other professional service businesses in the same zoning district. AB 1147, adopted in 2015, restored local regulatory authority, including land use controls, over massage establishments.

In Milpitas, massage-related businesses are not allowed in the Neighborhood Commercial (C1) zone based on compatibility issues. However, as a result of SB 731 and AB 619, the City permitted massage establishments to locate in C1 zones between 2011 and 2015 because state law at the time precluded the City from imposing stricter standards on massage establishments than other professional service businesses in the same zone. After the state restored local regulatory authority to local governments in 2015, the City reinstated local zoning regulations on massage establishments and, therefore, massage establishments operating in districts where they were once prohibited were rendered nonconforming uses. Staff has identified six (6) massage establishments that were permitted in the Neighborhood Commercial (C1) zoning district between 2011 and 2015 but have since been rendered nonconforming with the reinstatement of local land use authority by AB 1147.

Through a separate follow-up action, staff will explore mechanisms to address the nonconforming massage establishments located in C1 zones and will conduct outreach to these affected businesses to discuss zoning options. Staff will present a recommendation for consideration by the Planning Commission and City Council at a future date once those mechanisms have been identified.

### **Policy Alternatives:**

Alternative 1: Do not amend regulations in Title XI, Chapter 10 (“Zoning”) related to massage establishments.

Pros: Maintains the status quo.

**Cons:** Internal inconsistency in Municipal Code, outdated definitions and language.

**Reason not recommended:** Zoning Code regulations related to massage establishments would not reflect the changes in the updated Title III, Chapter 6 (“Massage Establishments and Practitioners”), which could be noncompliant with State law and present enforcement challenges. Further, not amending the Zoning Code retains outdated definitions and unclear provisions, therefore making implementation of the zoning regulations related to massage establishments more difficult.

**Fiscal Impact:**

No fiscal impact.

**California Environmental Quality Act:**

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that the proposed Ordinance is categorically exempt from CEQA review pursuant to Section 15061(b)(3) of the California Code of Regulations (CEQA Guidelines). Introduction and adoption of this Ordinance is not subject to review under CEQA, pursuant to the “common sense exemption” that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA (CEQA Guidelines, § 15061(b)(3)). A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project (CEQA Guidelines, § 15382). Adoption of the proposed Ordinance would not be an activity with potential to cause significant effect on the environment because it amends existing massage establishment regulations and does not alter where such businesses are allowed or conditionally allowed to be located, and therefore is exempt from CEQA.

**Recommendation:**

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) City Attorney shall read aloud title of Ordinance No. 38.839.
- 3) Move to waive the first reading beyond the title and introduce Ordinance No. 38.839 amending Milpitas Municipal Code Title XI (Zoning, Planning and Annexation), Chapter 10 (Zoning) relating to massage establishments.

**Attachments:**

- A. Draft Ordinance No. 38.839 for introduction
- B. Planning Commission Resolution No. 19-033

**PLEASE NOTE:**

This copy of Ordinance No. 38.839 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER:** 38.839

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING MILPITAS MUNICIPAL CODE TITLE XI (ZONING, PLANNING AND ANNEXATION), CHAPTER 10 (ZONING) RELATING TO MASSAGE ESTABLISHMENTS

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## **RECITALS AND FINDINGS:**

**WHEREAS**, the California State Legislature, through AB 1147 (2014) and AB 2194 (2016), has amended the Massage Therapy Act (California Business and Professions Code, § 4600 et seq.) and returned certain regulatory authority over the business of massage to the local level and clarified its intent; and

**WHEREAS**, the Massage Therapy Act enables consumers and local governments to more easily identify certified massage professionals, provides for consistent statewide certification and oversight of massage professionals, ensures that approved schools of massage provide a high level of training, and assists local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders, among other things; and

**WHEREAS**, the Massage Therapy Act requires local governments to impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers; and

**WHEREAS**, the City of Milpitas (hereafter, “City”) identified changes needed in Title III, Chapter 6 of the Milpitas Municipal Code (Massage Establishments and Practitioners”) to meet revised State law, to eliminate obsolete language, and to improve clarity, efficiency, and efficacy to the City’s regulations; and

**WHEREAS**, those changes to Title III, Chapter 6 (“Massage Establishments and Practitioners”) were introduced as Ordinance No. 172.6 to the City Council on June 18, 2019, adopted by the City Council on August 20, 2019, and effective September 19, 2019; and

**WHEREAS**, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, including refinements to Section XI-10-2 (“Definitions”), Section 5 (“Commercial Zones and Standards”), Section 6 (“Mixed Use Zones and Standards”), Section 10 (“Overlay Districts and Standards”), Section 13 (“Special Uses”), and Section 53 (“Off-Street Parking Regulations”) to ensure consistency with the amended Title III, Chapter 6 “Massage Establishments and Practitioners”; and

**WHEREAS**, on October 23, 2019, the Planning Commission of the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the proposed Amendment, and following such hearing recommended by a vote of 6-0 (with one member absent) that the City Council adopt the proposed Amendment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Adoption of the proposed Ordinance would not be an activity with potential to cause significant effect on the environment because it amends existing massage business regulations and does not alter where such businesses are allowed or conditionally allowed to be located, and therefore is exempt from CEQA. Therefore, it can be seen with certainty that there is no possibility that the

Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is categorically exempt from CEQA.

### SECTION 3. GENERAL PLAN CONSISTENCY

The proposed Zoning Amendment to amend regulations related to massage establishments is an implementation action that will continue to promote a strong economy and provide economic opportunities because the amendment continues to allow massage establishments as conditionally permitted uses in the City and does not change the zoning districts where massage establishments are conditionally permitted. Further, the proposed Ordinance ensures that massage establishments are compatible with the intent of the zoning districts in which they are located by introducing operating standards and review requirements to maintain neighborhood character and to protect the public health, safety, and welfare. This is consistent with Land Use Implementing Policy 2.a-I-5, which aims to promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social, fiscal, and land use constraints. Amending regulations related to massage establishments will not conflict with or impede achievement of any of the goals, policies, or land use designations established in the General Plan. Therefore, this Zoning Amendment is consistent with the General Plan, specifically, Land Use Guiding Principle 2.a-I-5.

### SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

The following entry in Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.02 “General Definitions,” of the Milpitas Municipal Code is hereby amended to read as follows:

**"Massage Establishment"** means any establishment having a fixed place of business, ~~including but not limited to any establishment in which massage, acupressure or similar services are made available (except those which are exempt by Government Code Section 51033 as amended from time to time), in which the teaching, practice, or the giving of massage, acupressure or similar procedure is conducted~~ where any person, firm, association, partnership, corporation or other entity engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage for compensation. For the purpose of this Chapter, the term “massage establishment” shall also include, but not be limited to, any business providing off-premises massage services.

### SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.03 “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definition to read as follows:

**"Massage establishment, accessory"** means an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

### SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE IX, CHAPTER 10, SECTION 5, TABLE XI-10-5.02-1

Title XI, Chapter 10, Section 5 “Commercial Zones and Standards,” Table XI-10-5 “Commercial Zones Uses” of the Milpitas Municipal Code is hereby amended, at Subsection 3. Health and Veterinarian Uses, to read as follows:

**Table XI-10-5.02-1  
Commercial Zone Uses**

Use	CO	C1	C2	HS	TC
<b>3. Health and Veterinarian Uses</b>					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP

Massage establishment <sup>15</sup>	NP	NP	<u>MCC</u>	<u>MCC</u>	<u>MCC</u>
<u>Massage establishment, accessory<sup>15</sup></u>	<u>NP</u>	<u>NP</u>	<u>MCS</u>	<u>MCS</u>	<u>MCS</u>
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P

<sup>1</sup> Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

<sup>2</sup> Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

<sup>3</sup> Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.

<sup>4</sup> In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

<sup>5</sup> For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

<sup>6</sup> Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

<sup>7</sup> When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

<sup>8</sup> Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

<sup>9</sup> Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

<sup>10</sup> Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

<sup>11</sup> Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

<sup>12</sup> Not including warehouses on the same site as the permitted use.

<sup>13</sup> No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

<sup>14</sup> Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

<sup>15</sup> Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

## SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 6, SUBSECTION .02(A)(2)

The following entry in Title XI, Chapter 10, Section 6 "Mixed Use Zones and Standards," Subsection XI-10-6.02(A)(2) "Accessory Uses" of the Milpitas Municipal Code is hereby deleted as follows:

### ~~2. Accessory Uses.~~

- ~~a. Massage Services. Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facility (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.~~

## SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 6, TABLE XI-10-6.02-1

Title XI, Chapter 10, Section 6 "Mixed Use Zones and Standards," Table XI-10-6.02-1 "Mixed Use Zone Uses" of the Milpitas Municipal Code, at Subsection 3. Health and Veterinarian Uses, is hereby amended to read as follows:

**Table XI-10-6.02-1  
Mixed Use Zone Uses**

Use	MXD	MXD2	MXD3
-----	-----	------	------

		Ground Level (Facing Retail street)	Upper Floor	
<b>3. Health and Veterinarian Uses</b>				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums <sup>4</sup>	C	C	C	C
Massage establishment <sup>17</sup>	<u>MCE</u>	<u>MCE</u>	<u>MCE</u>	<u>MCE</u>
<u>Massage establishment, accessory<sup>17</sup></u>	<u>MCS</u>	<u>MCS</u>	<u>MCS</u>	<u>MCS</u>
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P

<sup>1</sup> Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

<sup>2</sup> Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

<sup>3</sup> Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter.

<sup>4</sup> Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

<sup>5</sup> For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

<sup>6</sup> Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter

<sup>7</sup> Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

<sup>8</sup> Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

<sup>9</sup> Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

<sup>10</sup> Reserved

<sup>11</sup> Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

<sup>12</sup> Which include only permitted uses.

<sup>13</sup> Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

<sup>14</sup> Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

<sup>15</sup> New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

<sup>16</sup> Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

<sup>17</sup> Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

## SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 12, TABLE XI-10-12.07-1

Title XI, Chapter 10, Section 12 "Overlay Districts and Standards," Table XI-10-12.07-1 "Recreation and Entertainment Overlay District Uses" of the Milpitas Municipal Code, at Subsection 3. Health and Veterinarian Uses, is hereby amended to read as follows:

**Table XI-12.07-1  
Recreation & Entertainment Overlay District Uses**

Use	C2	HS	MP	M1
<b>3. Health and Veterinarian Uses</b>				
Animal grooming (no boarding)	P	P	NP	NP
Commercial athletic facilities	P	P	P	P
Hospitals	C	C	C	NP
Kennel	C	NP	NP	P

Massage establishment <sup>11</sup>	<u>MCC</u>	<u>MCC</u>	NP	NP
<u>Massage establishment, accessory<sup>11</sup></u>	<u>MCS</u>	<u>MCS</u>	<u>NP</u>	<u>NP</u>
Medical and dental clinic	C	NP	NP	P
Medical and dental office	P	NP	NP	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	NP	NP	NP
Pharmacy or drug store	P	P	NP	NP
Sauna and steam bath	C	P	NP	NP
Tanning salon	P	P	NP	NP
Veterinary clinic	C	C	P	P

<sup>1</sup> Not including stand alone off-sale alcoholic beverage outlets (such as liquor stores).

<sup>2</sup> Refer to the definition for "Commercial services" in Section XI-10-2, Definitions, of this Chapter.

<sup>3</sup> Refer to Subsection XI-10-47.04(C)(9), Certain Industrial Uses within Commercial Districts, of this Chapter.

<sup>4</sup> Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as televisions, radios, and pharmaceutical products.

<sup>5</sup> Refer to Subsection XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

<sup>6</sup> Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

<sup>7</sup> Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

<sup>8</sup> Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line. Service stations shall follow the

"General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

<sup>9</sup> Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three (3) acres or greater in area.

<sup>10</sup> Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

<sup>11</sup> Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

## **SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION .03**

The following entry in Title XI, Chapter 10, Section 13 "Special Uses," Subsection XI-10-13.03 "Accessory Uses" of the Milpitas Municipal Code is hereby amended to read as follows:

### **XI-10-13.03 — Reserved Accessory Uses**

~~In addition to those accessory uses specifically listed in the zoning district sections of this chapter, the following accessory uses shall be allowed:~~

~~A. **Massage Services.** Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facilities (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.~~

## **SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION .05(B)(9)**

The following entry in Title XI, Chapter 10, Section 13 "Special Uses," Subsection XI-10-13.05(B)(9) "Home Occupations" of the Milpitas Municipal Code is hereby amended to read as follows:

9. The occupations listed below shall not be considered incidental and secondary to the residence because they will change the residential character of the dwelling and because they change the character of the neighborhood:

- a. Barber and beauty shops or similar cosmetology establishments;
- b. Kennels and other boarding for pets;
- c. Massage establishments;
- d. Mechanical and auto repair;
- ed. Medical and dental offices;
- f. ~~e~~. Retail sales (excluding retail sales in which all products are sold over the phone or internet and shipped to the customer);
- gf. Commercial cannabis uses. See Subsection XI-10-13.15.

## **SECTION 12. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION .12(E)(1)(d)**

The following entry in Title XI, Chapter 10, Section 13 “Special Uses,” Subsection XI-10-13.12(E)(1)(d) “Live-Work Units” of the Milpitas Municipal Code is hereby amended to read as follows:

- E. Prohibited Uses.
  - 1. Any use not permitted within the underlying zoning district is prohibited along with the following:
    - a. Adult-oriented businesses;
    - b. Astrology;
    - c. Palmistry;
    - d. Massage establishments;

## **SECTION 13. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13**

Title XI, Chapter 10, Section 13 “Massage Establishments,” is hereby amended to add Subsection XI-10-16 “Massage Establishments” to the Milpitas Municipal Code to read as follows:

### **XI-10-13.16 – Massage Establishments**

- A. Purpose. The purpose of this Subsection, in conjunction with Title III, Chapter 6 “Massage Establishments and Practitioners” of the City of Milpitas Municipal Code, is to regulate the establishment, location, and operation of massage establishments and accessory massage establishments in compliance with State law.
- B. Definitions. For purposes of this Subsection, the following definitions shall apply:
  - 1. “Act” means the Massage Therapy Act (Business and Professions (B&P) Code Section 4600, et seq.), as amended.
  - 2. “California Massage Therapy Council” or “CAMTC” means the California Massage Therapy Council established under Business and Professions Code section 4602.
  - 3. “Certified massage practitioner” or “massage practitioner” means a person who is currently certified as a massage practitioner by the CAMTC pursuant to Business and Professions Code sections 4604.1 and/or 4604.2.
  - 4. “Certified massage therapist” or “massage therapist” means a person who is currently certified as a massage therapist by the CAMTC pursuant to Business and Professions Code section 4604.
  - 5. “Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value. In addition to accepting other forms of compensation, a person may be deemed to have received compensation for performing a massage when the massage is offered as part of a membership, as part of a package of services or as incidental to the purchase of a product.

6. "Employee" means any person hired by a massage establishment who renders any service for the business/owner in exchange for any form of compensation from the business, including independent contractors.

7. "Managing officer/employee" means a person that can or does have or share ultimate control over the day-today operations of a business.

8. "Massage" means any method of treating the external parts of the body, usually with the hands, so as to stimulate circulation and make muscles or joints supple, or relieve tension, for remedial, or health purposes offered in return for any form of compensation. Methods of massage include, but are not limited to, stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body with or without the aid of any mechanical or electrical apparatus or appliances. Massage may occur with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to, Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath. Massage includes the application of various manipulation or touch techniques to the muscular structure and soft tissues of the human body as defined in the Act, Business and Professions Code section 4601(e), and recognized as legitimate by CAMTC.

9. "Massage establishment" means any establishment having a fixed place of business where any person, firm, association, partnership, corporation or other entity engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage for compensation. For the purpose of this Chapter, the term "massage establishment" shall also include, but not be limited to, any business providing off-premises massage services.

10. "Massage Establishment, Accessory" means an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

11. "Massage technician" means and includes both a "massage practitioner" and a "massage therapist" as defined by this Chapter.

12. "Off-premises massage service" means any business where a function of such business is to engage in or carry on massage, not at a fixed location but at a location designated by the customer, massage technician, or other person, and sometimes known as an out-call massage service.

13. "Owner" means any individual who has any direct or indirect ownership interest in a massage establishment.

14. "Sole provider" means a massage business where the owner owns 100 percent of the business, is the only person who provides massage for compensation at or for that business, and has no other employees, independent contractors or rent-space massage therapists.

#### C. Applicability.

1. This section applies to Massage Establishments as defined in Title III, Chapter 6 "Massage Establishments and Practitioners" and Subsection XI-10-2.03 "Definitions" and Subsection XI-10-13.16 "Massage Establishments of this Chapter (Zoning) and to Accessory Massage Establishments" as defined in Subsection XI-10-2.03 "Definitions" and Subsection XI-10-13.16 "Massage Establishments" of this Chapter (Zoning).

2. Preexisting Massage Establishments. Any legally established massage establishments must comply with the provisions of this Subsection and the provisions of Title III, Chapter 6 "Massage Establishments and Practitioners".

3. Exemptions. The requirements of this Subsection do not apply to the following establishments or classes of individuals who perform massage while employed in their professional capacities:

a. Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists, who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of such licensed persons. "Working directly under the supervision" means that the person is an employee of the licensed person, is working at the same location as the licensed

person, has his or her work supervised by the licensed person, and that the licensed person is present when the employee is performing massage. This exemption shall not apply if the business performs massage on persons for whom the licensed person does not provide professional services.

- b. Barbers, beauticians, cosmetologists, manicurists, and other persons licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the California Business and Professions Code while engaging in practices within the scope of their licenses, and who perform massage only on the neck, face, scalp, hands, arms, or lower limbs up to the knee of their customers.
- c. Personal fitness training centers, gymnasiums, athletic facilities or health clubs, when the giving of massage for compensation is not a principal function of such businesses.
- d. Hospitals, nursing homes, sanitariums, or any other healthcare facilities duly licensed by the State of California.
- e. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
- f. Trainers of amateur, semi-professional or professional athletes or athletic teams, while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as an outdoor road or bike race.
- g. Sole providers, including sole providers operating an off-premise massage service, who have a valid certificate issued by the CAMTC pursuant to the Act, either as a certified massage practitioner or a certified massage therapist, and who are practicing consistent with the qualifications established by such certificate.

#### D. General Requirements.

1. Required Permits. Prior to the operation of a massage establishment, the owner or managing officer/employee must obtain a Massage Establishment Permit pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners", a Minor Conditional Use Permit issued by the Zoning Administrator pursuant to Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits", and a business license pursuant to Title III, Chapter 1 "Business Licenses" of the Milpitas Municipal Code. Prior to the operation of an accessory massage establishment, the owner must obtain a Massage Establishment Permit pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners", a Minor Conditional Use Permit pursuant to Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits", and a business license pursuant to Title III, Chapter 1 "Business Licenses" of the Milpitas Municipal Code. A Massage Establishment Permit, and any renewal thereof, shall be filed with the Chief of Police, pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners" of the Municipal Code. The Minor Conditional Use Permit issued by the Zoning Administrator, or, in the case of an Accessory Massage Establishment, a Minor Conditional Use Permit, shall not be granted until a Massage Establishment Permit is issued by the Chief of Police.
2. Compliance with Codes. Prior to the operation of a massage establishment or accessory massage establishment, the massage establishment must comply with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.
3. Permitted Zoning Districts. Massage establishments and accessory massage establishments are allowed in the C2, HS, TC, MXD, MXD2, MXD3 zoning districts, subject to a Minor Conditional Use Permit issued by the Zoning Administrator or Minor Conditional Use Permit issued by staff, respectively.
4. Operational Standards. In addition to the restrictions specifically required in the Massage Establishment Permit issued by the Chief of Police and pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners", all massage establishments must comply with the regulations applicable to the zoning district in which it is located and with the following operating requirement:
  - a. Hours of Operation. Massage Establishments shall operate and massage services shall be provided between the hours of 7:00 a.m. and 10:00 p.m. Massage services begun before 10:00 p.m. must terminate at 10:00 p.m. No customer shall be in such massage establishment between the hours of 10:00 p.m. and 7:00 a.m. No massage establishment shall be open between the hours of 10:30 p.m. and 7:00 a.m.
5. Off-Street Parking Requirement. Two (2) off-street parking spaces per treatment room must be provided. If there are no treatment rooms, then one (1) space for every two (2) massage chairs or two (2) massage

tables must be provided. The parking space must comply with all development standards set forth in Section 53 "Off-Street Parking Regulations".

6. Commercial Purposes Only. A massage establishment must be used for commercial purposes only. Use of the massage establishments for residential or lodging purposes is prohibited.
7. Off-Premises Massage Businesses. No off-premises massage business shall conduct massage in a hotel or motel room, vehicle, or in the residence of the massage technician. No off-premises massage service may be provided in a private residence or business between the hours of 10:00 p.m. and 7:00 a.m. However, a massage technician is permitted to provide off-premises massage services at a private residence so long as it is not the private residence of the massage technician and is not provided between the hours of 10:00 p.m. and 7:00 a.m.
8. Recreational or Special Events. Persons administering massages to other persons who are participating in a recreational or special event that has been approved pursuant to Section XI-10-15 "Special Events and Activities" and the Chief of Police shall be CAMTC certified but will not be required to hold a Massage Establishment Permit provided the following conditions are met:
  - a. The massage technician shall be registered with the City of Milpitas Police Department;
  - b. Massage services are equally available to all participants in the event;
  - c. The massage services are provided during the event in an open area at the site of the event;
  - d. The sponsors of the event have approved the provision of massage services at the event;
  - e. Massage services were included in the project description in the application for a Special Event Permit pursuant to Subsection XI-10-15.12 "Permit Application.";
9. Signs. A recognizable and legible sign complying with the requirements of Section XI-10-24 "Signs" must be posted at the main entrance of the massage establishment identifying the location as a licensed massage establishment.

#### E. Application Procedure.

1. Minor Conditional Use Permit issued by the Zoning Administrator Required for Massage Establishments. The owner of a massage establishment must apply for and obtain a Minor Conditional Use Permit issued by the Zoning Administrator before operating massage establishment. The Minor Conditional Use Permit issued by the Zoning Administrator is subject to the provisions of and issued pursuant to the Minor Conditional Use Permit process in Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits".
2. Minor Conditional Use Permit Required for Accessory Massage Establishments. The owner of an accessory massage establishment must apply for and obtain a Minor Conditional Use Permit reviewed by Planning Department staff before operating an accessory massage establishment. The Minor Conditional Use Permit is subject to the provisions of and issued pursuant to the Minor Conditional Use Permit process in Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits".
3. Compliance Review. The Planning Director or his or her designee will review the Minor Conditional Use Permits issued by the Zoning Administrator for massage establishments and Minor Conditional Use Permits for accessory massage establishments within one (1) year after issuance for compliance with this Subsection and Conditions of Approval. The Planning Director or his or her designee will conduct a similar compliance review of Conditional Use Permits issued by the Zoning Administrator for massage establishments and Minor Conditional Use Permits issued by Planning staff on an annual basis concurrent with review of the Massage Establishment Permit and renewal of the Business License for each use. Any failure to conduct a review does not waive any noncompliance or the City's right to conduct a review in the future.
4. Change in Ownership. If there is a change of property ownership, change of Owner's agent or representative, or any other change in material facts pertaining to the information contained in the Conditional Use Permit issued by the Zoning Administrator application for a massage establishment or the Minor Conditional Use Permit application for an accessory massage establishment, the new owner or new owner's authorized agent or representative shall notify the City prior to continuing to operate the massage establishment. The Planning Director or his or her designee will conduct a compliance review of the Conditional Use Permit issued by the Zoning Administrator for the massage establishment or the Minor Conditional Use Permit for the accessory massage establishment for the subject property in conjunction with the application for a Business License by the new property owner.

F. Violation of Regulations. Violation of any provision of this Chapter may result in the revocation of the after notice and an opportunity for a hearing has been given to the permittee, in accordance with Subsection XI-10-63.06 “Revocation, Suspension, Modification.”

**SECTION 14. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 53, TABLE 53.09-1**

The following entries in Title XI, Chapter 10, Section 53 “Off-Street Parking Regulations,” Table 53.09-1 “Number of Parking Spaces Required” of the Milpitas Municipal Code at Subsection C. Health and Veterinarian Uses, are hereby amended to read as follows:

**Table 53.09-1  
Number of Parking Spaces Required**

Use	Minimum Parking Spaces Required
<b>C. Health and Veterinarian Uses</b>	
Convalescent Homes	1 per 2 beds or 1 per 1,000 sq. ft, whichever is greater
Hospital	1 per bed or 1 per 220 sq. ft., whichever is greater
Kennel, indoor	1 per 1,000
<u>Massage Establishments</u>	<u>Two per treatment room or if no treatment room, one per 2 chairs or 2 tables</u>
Medical and dental Clinic and Office	1 per 225 sq. ft.

**SECTION 15. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

**SECTION 16. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

**RESOLUTION NO. 19-033**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
RECOMMENDING THAT THE CITY COUNCIL ADOPT A CITY-INITIATED  
ZONING TEXT AMENDMENT ORDINANCE TO AMEND SECTIONS OF CHAPTER  
10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO MASSAGE  
ESTABLISHMENTS AND MAKING CEQA FINDINGS OF EXEMPTION FROM  
ENVIRONMENTAL REVIEW**

**WHEREAS**, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

**WHEREAS**, the California State California State Legislature, through AB 1147 (2014) and AB 2194 (2016), has amended the Massage Therapy Act (California Business and Professions Code, § 4600 et seq.) and returned certain regulatory authority over the business of massage to the local level and clarified its intent; and

**WHEREAS**, the Massage Therapy Act enables consumers and local governments to more easily identify certified massage professionals, provides for consistent statewide certification and oversight of massage professionals, ensures that approved schools of massage provide a high level of training, and assists local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders, among other things; and

**WHEREAS**, the Massage Therapy Act requires local governments to impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers; and

**WHEREAS**, the City of Milpitas (hereafter, “City”) identified changes needed in Title III, Chapter 6 of the Milpitas Municipal Code (Massage Establishments and Practitioners”) to meet revised State law, to eliminate obsolete language, and to improve clarity, efficiency, and efficacy to the City’s regulations; and

**WHEREAS**, those changes to Title III, Chapter 6 (“Massage Establishments and Practitioners”) were introduced as Ordinance No. 172.6 to the City Council on June 18, 2019, adopted by the City Council on August 20, 2019, and effective September 19, 2019; and

**WHEREAS**, the City has prepared a Zoning Text Amendment Ordinance (“Amendment”), amending the City’s Municipal Code, including refinements to Section XI-10-2 (“Definitions”), Section 5 (“Commercial Zones and Standards”), Section 6 (“Mixed Use Zones and Standards”), Section 10 (“Overlay Districts and Standards”), Section 13 (“Special Uses”),

and Section 53 (“Off-Street Parking Regulations”) to ensure consistency with the amended Title III, Chapter 6 “Massage Establishments and Practitioners,” a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

**WHEREAS**, the Planning Commission is an advisory body to the City Council; and

**WHEREAS**, the Planning Commission hereby finds and determines that the Amendment is exempt from further California Environmental Quality Act (“CEQA”) review pursuant to CEQA Guidelines section 15061(b)(3) (common sense exemption); and

**WHEREAS**, on October 23, 2019, the Planning Commission held a duly-noticed public hearing on the Amendment, at which all those in attendance were given the opportunity to speak on the Amendment; and

**WHEREAS**, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision; and

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

#### **SECTION 1. Recitals**

The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

#### **SECTION 2. CEQA Finding**

The Planning Commission recommends that the City Council find and determine that the attached Amendment has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Adoption of the proposed Amendment would not be an activity with potential to cause significant effect on the environment because it amends existing massage business regulations and does not alter where such businesses are allowed or conditionally allowed to be located, and therefore is exempt from CEQA. Therefore, it can be seen with certainty that there is no possibility that the Amendment in question may have a significant effect on the environment; accordingly, the Amendment is categorically exempt from CEQA.

Accordingly, the attached Amendment is exempt from CEQA review pursuant to Sections 15061(b)(3) of the CEQA Guidelines.

**SECTION 3. Findings for Zoning Amendment (Milpitas Municipal Code, Subsection XI-10-57-02(G)(3))**

The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA19-0006:

*1. The proposed amendment is consistent with the General Plan.*

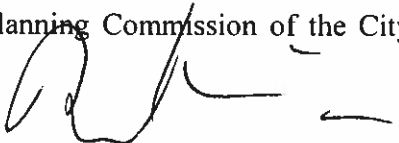
The proposed Zoning Text Amendment to amend regulations related to massage establishments is an implementation action that will continue to promote a strong economy and provide economic opportunities because the amendment continues to allow massage establishments as conditionally permitted uses in the City and does not change the zoning districts where massage establishments are conditionally permitted. Further, the proposed Ordinance ensures that massage establishments are compatible with the intent of the zoning districts in which they are located by introducing operating standards and review requirements to maintain neighborhood character and to protect the public health, safety, and welfare. This is consistent with Land Use Implementing Policy 2.a-I-5, which aims to promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social, fiscal, and land use constraints. Amending regulations related to massage establishments will not conflict with or impede achievement of any of the goals, policies, or land use designations established in the General Plan. Therefore, this Zoning Text Amendment is consistent with the General Plan, specifically, Land Use Guiding Principle 2.a-I-5.

*2. The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed Zoning Text Amendment to amend regulations related to massage establishments will not adversely affect the public health, safety, and welfare because the amendment will retain the ability of a review authority to analyze land use, parking, noise, and other criteria to ensure that massage establishments are compatible with surrounding uses.

**SECTION 4:** The Planning Commission of the City of Milpitas hereby adopts Resolution No. 19-033 recommending that the City Council adopt the Zoning Text Amendment ZA19-0006 Ordinance based on the above Findings.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on October 23, 2019.

  
\_\_\_\_\_  
Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on October 23, 2019 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ricky Ablaza	✓			
Tim Alcorn	✓			
Sudhir Mandal	.		✓	
Demetress Morris	✓			
Bill Chuan	✓			
Steve Tao	✓			
Evelyn Chua	✓			



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Re-open Public Hearing and Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and Allow a Limited Term for Deferral of Payment or Reduced Fee for Residential Projects (Staff Contact: Ned Thomas, 408-586-3272)</b>
<b>Category:</b>	Public Hearings-Community Development
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Ned Thomas, Planning Director, 408-586-3273 Kevin Riley, TASP Manager, 408-586-3292
<b>Recommendations:</b>	<ol style="list-style-type: none"><li>1. Re-open public hearing and move to close hearing following comments.</li><li>2. Adopt a Resolution authorizing the City Manager to adjust the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to establish a graduated fee program and the deferral of TADIF payments until occupancy, with these provisions in effect for 12 months from the date of adoption.</li></ol>

### **Executive Summary**

Based on City Council input at its meeting of October 1, 2019, staff is recommending a phased increase of the Transit Area Development Impact Fees (TADIF) for residential projects within the Transit Area Specific Plan (TASP). This revised recommendation responds to the interest of Councilmembers to lessen the financial impact on previously approved projects that will be submitting building permit applications in the near future. The staff recommendation continues to allow the deferral of fee payment for a limited time for projects that would pay the full fee increase.

### **Background:**

At the regular meeting of October 1, 2019, the Council continued the public hearing regarding an update of the Transit Area Development Impact Fees (TADIF) and directed staff to explore alternatives to the full fee adjustment (from \$32,781/dwelling unit to \$40,487/dwelling unit) as proposed. The previous agenda report and all exhibits, including the EPS technical memo dated May 20, 2019, are included in the agenda packet to provide the Council with substantive information regarding increased TASP infrastructure costs and the proposed fee update.

As noted in the prior agenda report, design and construction costs for public infrastructure in the TASP area have cumulatively increased 16.2%, and land values have cumulatively increased 43.8% since 2014. Total costs to fund the TASP Basic Infrastructure Program (BIP) increased from \$233,788,200 (2014) to \$286,968,018 (2019), representing an overall increase of \$49.3 million or 22.75% for the combined commercial and residential components. The City will bear these cost increases in the future either by adjusting fees accordingly or providing subsidy from another funding source, including the City's General Fund.

Recouping annual increase in infrastructure and land costs is critical so that the City has the means to construct each of the infrastructure projects listed in the TASP BIP. These projects include new and improved streets and sidewalks, critical water and sewer extensions and connections, and new parks

and trails. A rising deficit in funding these improvements could ultimately shift some of the financial burden to other City funding sources or eliminate or downsize some of the projects listed in the BIP such as pedestrian overcrossings, park improvements, trails, and other planned amenities. At the same time, the substantial increase in development impact fees affects the financial feasibility of development projects and could deter construction of some projects.

TASP policies require developers to construct or contribute their fair share cost for transportation and infrastructure improvements to serve their projects. The purpose of the impact fee is to proportionally share the costs of public improvements that primarily benefits new residents and projects within the TASP area. The City's commitment to high quality parks, roadways, pedestrian pathways, utilities and other services and amenities within the TASP is an important part of the marketing of new development within the area.

### **Analysis:**

#### **Phased Implementation**

Based on direction from the Council and input from the development community, staff recommends a phased approach to the TASP fee adjustment and the deferral of fee payment, for a limited time, for projects in the final phase (Tier 3). A phased approach will provide relief to developers with projects that have already been considered and approved by the City but await building permits (see Attachment D), and the limited deferral of fee payment may incentivize developers to move toward permitting and construction. Permit records indicate that as of March 2019 and including the latest entitlements, 1,964 (28%) of the entitled 6,955 residential units in the TASP have not yet been issued building permits.

The EPS technical memo (Exhibit A to the Resolution) indicates that the allowable TADIF increase is as follows: 1) 23.5% of the current fee or an increase of \$7,706 per residential unit; 2) 16.2% of the current fee or an increase of \$3.69 per square foot for retail uses; and 3) 16.2 % of the current fee or an increase of \$5.92 per square foot for office uses. This would update the 2014 fee to reflect current construction costs and land values for the TASP BIP. Staff recommends that the Council adopt the 2019 TASP fee adjustment with the below listed phasing provisions to ease the burden on residential projects.

- 1) All projects with a valid building permit *issued* before January 19, 2020 (fee adjustment goes into effect 60 days after adoption), will have fees calculated at the 2014 rate; fees would be paid at the issuance of building permits per current standard practice.
- 2) **Tier 1 Adjustment:** Implement a 5.875% fee increase (25% of allowable increase or \$1,926). The fee would increase from \$32,781/unit to \$34,707/unit for projects that submit a full and complete building permit application by February 19, 2020 (three months after adoption); fees would be paid at the issuance of building permits per current standard practice.
- 3) **Tier 2 Adjustment:** Implement a 11.75% fee increase (50% of allowable increase or \$3,853). The fee would increase from \$32,781/unit to \$36,634/unit for projects that submit a full and complete building permit by May 19, 2020 (six months after adoption); fees would be paid at the issuance of building permits per current standard practice.
- 4) **Tier 3 Adjustment:** Implement the full 23.50% fee increase (100% of allowable increase or \$7,706). The fee would increase from \$32,781/unit to \$40,487/unit for projects that submit a full and complete building permit application by November 18, 2020 (one year after adoption); fees would be calculated at the issuance of building permits, but payment would be deferred until occupancy.

All projects *issued* a building permit after November 18, 2020, would have fees calculated at the full 2019 rate; fees would be paid at the issuance of building permits per current standard practice.

#### **TASP Fee Results**

The TASP area is rapidly transforming from older industrial uses into a higher density, transit-oriented neighborhood intended to support the significant new public investment in the new Milpitas Transit Center, including the extension of regional BART service. Private investment in new residential projects

has always been supported by important improvements in public infrastructure, including parks, trails, pedestrian bridges, new streets and improved utility infrastructure. TASP area residents expect these planned amenities to be completed through an ongoing partnership between the City and the developers in building the community. The City has completed many TASP area improvements and amenities, and several more are planned or underway, funded by the fees deposited in the Transit Area Development Impact Fee (TADIF) account by prior projects. Significant projects include Bob McGuire Park and the Sal Cracolice Community Center, McCandless Park, the extension of South Milpitas Boulevard around the BART Station, pedestrian bridges, and creek trails.

At present, only 154 residential units remain to be entitled under the 2008/2011 TASP development scenario. Staff expects that a subsequent fee adjustment will be made in conjunction with the full TASP Update, which is currently underway with anticipated adoption in fall/winter 2020, and a revised development scenario will necessitate a complete reassessment and recalculation of the overall infrastructure costs and necessary fees under the revised development scenario. A detailed nexus study will be warranted with the TASP 2020 Update to validate the needs/benefits related to the improvements and the fair allocation of the necessary fees across all categories of development. As part of this nexus study, an assessment would be conducted on the feasibility of defining fees by bedrooms rather than by residential units. The nexus study would also reflect the adjusted land use mix and development capacity, including the potential number of hotel rooms within the TASP.

### **Policy Alternatives:**

Attachment F provides a comparison of the current staff recommendation, Alternative 1 (original staff recommendation from October 1, 2019) and Alternative 2 (no fee increase).

**Alternative 1:** Adopt updated fees based on cost estimates for infrastructure items, as provided in the 2019 EPS Technical Memorandum and allow the deferral of residential fees payment until approval of occupancy for those projects that have filed a complete permit application within twelve (12) months the City Council adoption of the fee adjustment.

**Pros:** The fee adjustment is simple and straightforward and will maximize cost recovery to fund BIP improvements, with the deferral of the fee payment providing incentive in the form of financial relief to developers of housing projects.

**Cons:** Any substantial increase in fees could affect the financial feasibility of approved projects and discourage interest in future development. The fee payment deferral would result in a (minimal) loss of revenue value due to inflation effects between fee calculation and payment.

**Reason not recommended:** Feedback from the development community indicated that a full increase in fees would be difficult to absorb and would affect the financial feasibility of previous City-approved projects. A phased approach will likely provide relief to the developers who did not include a 100% fee adjustment in their pro forma analysis.

**Alternative 2:** Do not increase the TADIF in accordance with the 2019 EPS Technical Memorandum and adopt a lower fee or maintain the current 2014 fees.

**Pros:** Development projects could proceed based on a lesser or the current TADIF and the financial feasibility of TASP pipeline projects would be minimally or less affected.

**Cons:** Maintaining the current TADIF or reducing the fee from the maximum allowed would result in the City collecting less funds than are required for the BIP. The City would incur a financial deficit and additional sources of City funds would have to be identified to make up for the shortfall. Developers would not contribute their proportional share of necessary public improvements that will primarily benefit all projects in the TASP. Not increasing the fee would contradict TASP Policies, which expect developers to contribute their proportional share for transportation and infrastructure improvements.

**Reason not recommended:** Adequate TADIF funds are needed to cover the costs of the Basic Infrastructure Plan (BIP). No increase has been made since 2014 and the City would continue to incur a shortfall in funding the TASP BIP.

**Fiscal Impact:**

The increased TADIF would improve cost recovery and increase the amount of funds that are available to fund the BIP, which consists of roadway, sewer and water system infrastructure improvements and parks and community facilities to serve existing and future residents and businesses in the TASP area. The EPS analysis indicates that the recommended TADIF increase could generate up to \$53,179,818 in additional funds for the BIP depending on the amount and types of actual projects that will eventually be built. Depending on when building permit applications are submitted, however, the phasing of the fee increase could generate less fees than this maximum allowable amount.

**California Environmental Quality Act (CEQA):**

The action being considered is statutorily exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15273 insofar as establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment.

**Recommendations:**

- 1) Re-open public hearing and move to close hearing following comments.
- 2) Adopt a Resolution authorizing the City Manager to adjust the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to establish a graduated fee program and the deferral of TADIF payments until occupancy, with these provisions in effect for 12 months from the date of adoption.

**Attachments**

- A. Resolution Adopting 2019 Fees
- B. Agenda Report from October 1, 2019 City Council meeting
- C. Exhibit A to Resolution: EPS Technical Memo dated May 20, 2019
- D. Exhibit B to Resolution: List of Pipeline Projects in TASP
- E. Letter from Core Companies dated October 1, 2019
- F. TADIF Recommendation Comparison Table

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADJUSTING THE EXISTING  
TRANSIT AREA DEVELOPMENT IMPACT FEE FOR PUBLIC INFRASTRUCTURE AND  
IMPROVEMENTS**

**WHEREAS**, the City Council of the City of Milpitas (“City”) has previously established a development impact fee program, set forth in Chapter 4 of Title VIII of the Milpitas Municipal Code, in order to collect revenue to defray the cost of public infrastructure and improvements necessitated by new development; and

**WHEREAS**, pursuant to Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council may adopt development impact fees for different areas within the City by resolutions with appropriate findings that set forth the bases for such fees and the formulae to calculate such fees; and

**WHEREAS**, on June 3, 2008, the City Council adopted Resolution No. 7760 approving the Transit Area Specific Plan, which identified basic public infrastructure needed to serve the new development in the Transit Area Specific Plan area and to maintain or improve levels of service for public facilities; and

**WHEREAS**, on September 2, 2008, the City Council adopted Resolution No. 7778 establishing a Transit Area Development Impact Fee (“TADIF”) pursuant to Government Code Section 66000, *et seq.* (“Mitigation Fee Act”) and Chapter 4 of Title VIII of the Milpitas Municipal Code to defray costs of constructing public infrastructure and improvements necessitated by new development in the Transit Area Specific Plan area, based upon a costs/fees technical report dated August 2008 prepared by Economic and Planning Systems, Inc., and which fees may be adjusted from time to time in accordance with Chapter 4 of Title VIII of the Milpitas Municipal Code; and

**WHEREAS**, Resolution No. 7778 establishing the Transit Area Development Impact Fee called for an annual evaluation of the TADIF fund balance and activity, and further called for annual adjustments of infrastructure costs to be determined by a regional index, and further called for periodic updates of the Infrastructure Financing Technical Report through the review of the infrastructure costs, development activity and collection and use of fees to date; and

**WHEREAS**, on December 18, 2012, the City Council adopted Resolution No. 8214 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008, which Resolution was based upon a costs/fees technical report dated December 2012 prepared by Economic and Planning Systems, Inc., augmenting and updating the prior study regarding the Transit Area Development Impact Fee and was the basis for the increased impact fees proposed therein; and

**WHEREAS**, on March 4, 2014, the City Council adopted Resolution No. 8344 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008, which Resolution was based upon a costs/fees technical report dated February 2014 prepared by Economic and Planning Systems, Inc., augmenting and updating the prior study regarding the Transit Area Development Impact Fee and was the basis for the increased impact fees proposed therein; and

**WHEREAS**, based upon increased design and construction costs as measured by the Engineering News Report Construction Cost Index (“ENR” for the San Francisco Bay Area, and for increased right of way or land costs based on appraisal, all as further described in the costs/fees 2019 Technical Memorandum by Economic and Planning Systems, Inc., dated May 20, 2019, the City Council now wishes to adjust the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray higher and additional costs of constructing such public infrastructure and improvements; and

**WHEREAS**, in accordance with Government Code Section 66018, the City Council conducted open public hearings on the proposed fee adjustment set forth in this Resolution at its regularly scheduled meetings held on October 1, 2019, and continued the public hearing to November 19, 2019, and notice of the time and place of these meetings, including a general explanation of this Resolution and the related development impact fee program ordinances and a statement regarding the availability of data indicating the amount of the proposed Transit Area Development Impact Fee

revenue sources anticipated to finance the improvements, was provided at least fourteen (14) days prior to each of these City Council meetings to those interested parties that requested such notice in writing, but since no such requests were made, notification of this hearing matter was provided in accordance with Government Code Section 66016; and

**WHEREAS**, notice of time and place of the public hearing on the adjustment to the Transit Areas Development Impact Fee was published in a newspaper regularly published once a week as required by California Government Sections 6062a and 66018, and public data indicating the amount of the revised Transit Area Development Impact Fee, estimated cost required to provide the public infrastructure or improvements, and the revenue sources anticipated to finance the facilities was made available to the public at least ten (10) days prior to the October 1, 2019 and the November 19, 2019 City Council meetings; and

**WHEREAS**, the City Council has received and considered any and all public comments, oral and written, received prior to or during the public hearing on the adjustment to the Transit Area Development Impact Fee; and

**WHEREAS**, the Transit Area Specific Plan includes a detailed description of public facilities required to serve the Transit Area Specific Plan area and a Financing Plan, dated May 28, 2008, updated periodically, that contains specific fiscal and financial policies, identifies public facilities costs and recommended financing mechanisms to pay for the needed public facilities; and

**WHEREAS**, the City Council has considered such Financing Plan and finds that it sets forth in-depth factual grounds for the need for a Transit Area Development Impact Fee as a means of assuring that new developments within the Transit Area pay their proportionate share of the costs of needed public facilities; and

**WHEREAS**, the City Council has also considered the 2019 Technical Memorandum describing the need for adjusted fees, along with the initial Milpitas Transit Area infrastructure Financial Technical Report (“Technical Report”), dated August 2008, pursuant to the policies contained in the Financing Plan; the 2019 Technical Memorandum prepared by Economic and Planning Systems, Inc., is on file with the City Clerk; and the public facilities for which the Transit Area Development Impact Fee will be used are specifically identified in the Basic Infrastructure Program, for which a summary of the schedule of costs is included in the 2019 Technical Memorandum; and

**WHEREAS**, the public facilities reflected in the Basic Infrastructure Program are needed to protect the health, safety and general welfare within the Transit Area Specific Plan area, to facilitate orderly urban development within the Transit Area Specific Plan area, and to promote economic well-being within that area and the City as a whole; and

**WHEREAS**, the 2019 Technical Memorandum attached to this Resolution, which memorandum describes the need for adjusted fees, further augments and updates the prior studies regarding the Transit Area Development Impact Fee and is the basis for the proposed adjustment to the fees as set forth in this Resolution and, when considered together with the Technical Report and the Transit Area Development Impact Fee Report, dated February 2014 (“2014 Report”), establishes the required nexus findings for the Transit Area Development Impact Fees; and

**WHEREAS**, the per-unit rate increase for new fees is substantial and may be a detrimental burden on desirable development that has already been approved but has not yet been permitted; the California Government Code Sections 66000, *et seq.* require that development impact fees be paid not later than final inspections or the issuance of a certificate of occupancy; the City Municipal Code requires impact fee payments be made at the time of building permit issuance unless otherwise described by the fee Resolution or otherwise required; and

**WHEREAS**, the City is planning and preparing an update of the Transit Area Specific Plan, including an updated development scenario and associated public infrastructure needs, with a corresponding infrastructure cost and fee study that can alter the amount and arrangement of allocated proportional share payments in a new resolution process; and

**WHEREAS**, establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment and is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15273 of the CEQA Guidelines.

## FINDINGS

**NOW THEREFORE**, the City Council of the City of Milpitas, after duly considering the record before it, including the 2019 Technical Memorandum attached hereto, the Technical Report, and the 2014 Report, all of which are incorporated herein by this reference, makes the following findings and determines based upon the reports, testimony and other materials before it, including but not limited to the documents and information listed in the Recitals above, which are found to be true and correct and are fully incorporated herein by reference:

1. The purpose of the Transit Area Development Impact Fee is to finance basic public infrastructure facilities, as identified in the Basic infrastructure Program, as amended, that are needed to provide essential public services and assure the public safety for new development within the Transit Area Specific Plan area.

2. Based on the analysis set forth in the Technical Report as augmented by the 2014 Report and the 2019 Technical Memorandum and the comments received thereon, there is a need to impose an increase to the current development impact fee for basic infrastructure facilities identified in the Basic Infrastructure Program, as amended, so that development within the Transit Area will meet the standards and policies in the Transit Area Specific Plan and the City's General Plan.

3. The reports and facts and evidence presented to the City Council establish that there is a reasonable relationship between public facilities, as identified in the Basic Infrastructure Program, as amended, to be funded in part by the Transit Area Development Impact Fee proposed herein and the types of development on which the fee is imposed; and there is a reasonable relationship between the amount of the fee, as set forth in this Resolution, and the costs of needed public infrastructure facilities as they are specifically attributed to the various types of development within the Transit Area Specific Plan areas.

4. The cost estimates contained in the 2019 Technical Memorandum are an accurate reflection of the current construction costs for necessary basic infrastructure facilities and the fee revenues that are expected to be generated by new development will not exceed such development's proportionate share of these costs.

5. The proposed Transit Area Development Impact Fee is consistent with the City of Milpitas General Plan and the Transit Area Specific Plan.

6. The substantial increases in infrastructure costs and the corresponding increases in development impact fees are deemed to have a significant burden on supported and approved projects in the TASP area that await building permits.

## RESOLVED ACTIONS

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

### Section 1. General.

- A) This Resolution is adopted pursuant to California Government Code Section 66000 *et seq.* ("Mitigation Fee Act"), Article XI, Section 7 of the California Constitution, and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code ("Fees for New Development").
- B) The fee established by this Resolution shall apply to all new development within the Transit Area as a condition precedent of building permit issuance to defray the cost of certain public infrastructure improvements and facilities required to serve or to benefit the new development. The fee established by this Resolution shall apply to all new development within the Transit Area that has not been issued a building permit(s) and has not fully paid the applicable Transit Area Development Impact Fee. The Transit Area is delineated by the boundaries of the adopted City of Milpitas Transit Area Specific Plan. This Resolution does not replace subdivision map exactions or other measures required to mitigate site-specific impacts of a development project, other regulatory, development and processing fees, funding required pursuant to a development agreement, funds collected pursuant to a reimbursement agreement for amounts that may exceed a development's share of public improvement costs, or assessment district proceedings, assessments, or property taxes, unless so specified.

## Section 2. Definitions.

- A) “Transit Area” means the approximate 437-acre area of the City covered by the Transit Area Specific Plan adopted by the Milpitas City Council on June 3, 2008.
- B) “Transit Area Development Impact Fee” means the combined fee required to implement the Basic Infrastructure Program, as amended, in the amount calculated according to the formulae and methodologies set forth in this Resolution.
- C) “Basic Infrastructure Program” is the listing and schedule of public facilities that can be funded by the Transit Area Development Impact Fee that is applicable to all new development in the Transit Area. The Basic Infrastructure Program is included in the Infrastructure Financing Technical Report on file with the City Clerk.
- D) Land uses subject to the Transit Area Development Impact Fee are defined as follows:
  - (1) “Residential” means all new single and multi-family dwellings.
  - (2) “Commercial” means any business engaging in the sale of merchandise and food. This category would also include those establishments providing commercial services, as defined in Milpitas Municipal Code XI-10-2.02, General Definitions. Uses in this category include but are not limited to retail stores, restaurants, banks, childcare facilities and beauty salons.
  - (3) “Office” means any administrative, professional, research, medical, or similar businesses, having only limited contact with the public, provided no merchandise or services are sold on the premises except those that are incidental or accessory to the primary use. Uses in this category include but are not limited to medical clinics and offices, real estate offices, and research and development businesses.
  - (4) “Hotel” refers to the definition provided in Milpitas Municipal Code XI-10-2.02, General Definitions.
  - (5) “Other Uses” means land uses not specifically defined by this section.

## Section 3. Fee Amount

- A) The amount of the Transit Area Development Impact Fee is based upon the findings in the Technical Report, with costs increased based on technical and financial analyses contained in the 2019 Technical Memorandum. That 2019 Technical Memorandum is attached hereto and incorporated herein by reference as **Exhibit A**. According to the Technical Memorandum, the following schedule of base fees shall apply to all new development in the Transit Area:
  - a) Residential - \$40,487 per unit
  - b) Commercial - \$26.49 per square foot
  - c) Office - \$45.52 per square foot
  - d) Hotel - \$0 per room
  - e) Other Uses - The fee amount for uses not specifically defined in this Resolution shall be determined by the Finance Director or his or her designee. A focused nexus study may be required of the applicant to make the determination.
- B) The fee amounts listed herein shall be subject to annual adjustment, as set forth in Section 9 of this Resolution, and as otherwise allowed by law. As described in the 2019 Technical Memorandum, the fee program should be reviewed annually as part of the City financial reporting and budgeting process and the technical reports and supporting data and information should be updated every three to five years, and the fee program may need to be revised during these reviews accordingly.

## Section 4. Transit Area Development Impact Fee Requirements.

- A) General.
  - (1) The amounts and calculation of the Transit Area Development Impact Fee are based upon the following considerations:

- a. New development will pay only for the construction of those public facilities or where there is a reasonable relationship between the facilities funded and the benefits, demands and needs generated by the new development.
  - b. Each type of new development shall contribute to the funding of the needed facilities in proportion to the need for the facilities created by that type of development.
  - c. The public facilities funded by the Transit Area Development Impact Fee and the calculations resulting in the Transit Area Development Impact Fee amount are documented in the original Infrastructure Financing Technical Report included in the materials considered for adoption of the original Transit Area Impact Fee in September of 2008 and which is here augmented by the 2014 Updated Report.
  - d. The amount of the Transit Area Development Impact Fee shall include consideration for appropriate financing charges including any reimbursement payments made to developers or property owners pursuant to subsection 5.B (2), and shall include consideration for reimbursement of administrative costs pursuant to subsection 5.B (3).
- B) Applications Requiring Payment of Development Impact Fees - Building Permit/Certificate of Occupancy. Any applicant within the TASP area who:
- (1) Submits a full and complete residential building permit application on or before February 18, 2020 (three months after adoption of the fee adjustment) shall be obligated to pay impact fees at the 2014 rate plus twenty-five percent (25%) of the adjustment that defines the 2019 residential per-unit fee (i.e., \$34,707.50/dwelling unit), to be calculated and paid at the time of building permit issuance, or;
  - (2) Submits a full and complete residential building permit application on or before May 18, 2020 (six months from date of fee adjustment) shall be obligated to pay impact fees at the 2014 rate plus fifty percent (50%) of the adjustment that defines the 2019 residential per-unit fee (i.e., \$36,634/dwelling unit), to be calculated and paid at the time of building permit issuance, or;
  - (3) Submits a full and complete residential building permit application on or before November 18, 2020 (six months after adoption of the fee adjustment) and within one (1) year of the approval date of this resolution shall have fees calculated prior to the issuance of the building permit and shall pay to the City, not later than final inspection or issuance of occupancy for each building, those fees in the full amount (2014 rate plus 100% adjustment) as set forth in this Resolution and thereby calculated, unless earlier payment is required by City ordinance or State law. Developers who choose to take advantage of this deferred payment shall enter into an agreement with the Planning Department prior to the issuance of permits in order to specify the payment arrangements with respect to timing of payment with respect to receiving occupancy rights. Projects subject to the provisions herein shall include those projects identified in the attached Exhibit B to this resolution, which are currently entitled but that have not yet obtained permits. Disputes as to the timing of payment obligations as provided in these provisions shall be resolved by the Planning Director, or;
  - (4) Submits a full and complete residential building permit application on or after November 19, 2020 (one year after adoption of the fee adjustment) shall be obligated to pay impact fees at the 2014 rate plus one hundred percent (100%) of the adjustment that defines the 2019 Residential per-unit fee (i.e., \$49,487/dwelling unit), to be calculated and paid at the time of building permit issuance.
- C) Fee Unit. The unit basis of the Transit Area Development Impact Fee shall be charged for each new dwelling unit and new non-residential square footage. No Transit Area Development Impact Fee shall be charged for remodeling or for an addition to an existing building creating less than 500 square feet of additional floor area. For additions greater than 500 square feet the amount of the Transit Area Development Impact Fee for that addition shall be determined according to the formula set forth in Section 4(D).
- D) Formula for Calculating the Fee. The Transit Area Development Impact Fee, as set forth in this Resolution, shall be determined by a formula that is based on the cost of the required infrastructure, the proportion of those costs attributable to development in the Transit Area as a whole, and each unit of development's proportional share of the Transit Area costs as a whole. These formulas are included in the Infrastructure Financing Technical Report and shall be updated pursuant to this Resolution from time to time to

changes in construction costs, development schedules, availability of supplemental funds, and other relevant factors. Changes in such costs form the basis for the fee adjustments adopted in this Resolution and as described in the 2019 Technical Memorandum.

#### Section 5. Use of Fee Revenue.

The Transit Area Development Impact Fee shall fund public facilities, improvements identified in the Basic Infrastructure Program, as amended, and as determined in the Infrastructure Financing Technical Report and any future additions and amendments to the said report, all of which are incorporated by reference into this Resolution.

- A) The City shall deposit the fees collected under this Resolution in a special fund, the Transit Area Development Impact Fee Account, designated for funding facilities listed in the Basic Infrastructure Program.
- B) The fees and all interest earned on accrued funds shall be used only to:
  - (1) Fund the costs of the public facilities specified in the Basic Infrastructure Program, or to reimburse the City for such construction if funds were advanced by the City from other sources; or
  - (2) Reimburse developers or property owners for the costs accrued when a developer or property owner constructs and dedicates to the City a public facility(ies) included in the Basic Infrastructure Program and the sum value of the facility(ies) constructed (as estimated in the Basic Infrastructure Program) exceeds the total fee liability for a given project. Reimbursements shall include appropriate financing charges and shall be based upon the Local Agency Investment Fund (LAIF) quarterly interest rate. Financing charges included in any reimbursement payments to developers or property owners shall not exceed this interest rate, as calculated by the City's Director of Finance. Reimbursements shall not be available if the value of the constructed and dedicated improvement is below the total fee liability for a given project.
  - (3) Reimburse the City of Milpitas, to offset administrative costs associated with administering and updating the Area Development Impact Fee, not to exceed two (2.0) percent of the applicable fee amount.

#### Section 6. Ministerial Exemptions.

The following actions or conditions shall qualify for a ministerial exemption from the Transit Area Development Impact Fee without having to go through the City Council exemption process set forth in Milpitas Municipal Code VIII-4-2.04:

- A) No Transit Area Development Fee shall be due for the demolition of an existing structure and the building of a new structure on the same site where the additional area in the new structure is 500 square feet or less and no additional dwelling units are created;
- B) No Transit Area Development Impact Fee shall be due if the Transit Area Development Fee or an equivalent amount has been previously paid in full (e.g. as a requirement of a subdivision map) for a particular property and use.

#### Section 7. Authority for Additional Mitigation.

Fees collected pursuant to this Resolution do not replace any existing development fees, except for the sewer treatment plant fee, VIII-2-7.04 "Treatment Plant Fees" and the park in-lieu fee, XI-01-9.07 "Amount of Fee In-Lieu of Land Dedication," or as otherwise the City Council may specifically provide, or demand or connection charges levied on a Citywide basis, or limit requirements or conditions to provide site-specific mitigation of site-specific impacts imposed upon development projects as part of the normal development review process.

#### Section 8. Annual Review.

Pursuant to Government Code Section 66006(b) and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council shall review annually a report prepared by staff documenting the amount of the Transit Area Development Impact Fee, fee fund balances, the amount of fees collected, and the amount of fee funds expended (by infrastructure item as shown in the Basic Infrastructure Program) and the fund balance of the TADIF Account.

Section 9. Annual Adjustments:

The Transit Area Development Impact Fee adopted pursuant to this Resolution shall be automatically increased each fiscal year by the Finance Director or his or her designee in conjunction with the City's annual budget process. The percentage increase shall be based on the Engineering News Record (ENR) Construction Cost Index for the San Francisco Bay Area, as measured from the immediately preceding December and December of the prior year.

Section 10. Periodic Update.

The Infrastructure Financing Technical Report shall be updated every three to five years. This update will include a thorough review of the infrastructure costs, development activity, and collection and use of fees to that date.

Section 11. Termination of Fee.

The City shall not collect the Transit Area Development Impact Fee established by this Resolution once funds sufficient to construct all improvements described in the then-current Basic Infrastructure Program have been collected.

Section 12. Severability.

The provisions of this Resolution are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

Section 13. Effective Date.

This Resolution shall take effect sixty (60) days after the date of its adoption in accordance with California Government Code Section 66017, provided this Resolution may take effect immediately if the City Council adopts a separate Resolution making the required findings of an urgency measure as provided by California Government Code Section 66017.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and to Allow a Limited Deferral of TADIF for Certain Projects with Entitlements (Staff Contact: Ned Thomas, 408-586-3273)</b>
<b>Category:</b>	Public Hearings-Community Development
<b>Meeting Date:</b>	10/1/2019
<b>Staff Contact:</b>	Ned Thomas, Planning Director, 408-586-3273 Kevin Riley, TASP Manager, 408-586-3292
<b>Recommendations:</b>	Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on current cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP) and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B to the Resolution, with the deferred payment provision to expire 12 months after the effective date of the fee increase.

### **Background:**

With the adoption of the Transit Area Specific Plan (TASP) in 2008, the City Council adopted a fee program to share the costs of public improvements among all new developments approved and constructed within the TASP area. The Council last adopted and applied the current Transit Area Development Impact Fees (TADIF) in March 2014, and staff has identified the need for a near-term update of fees to recover costs that have escalated since 2014.

The consultant contract with Economic & Planning Systems Inc. (EPS), approved by the City in January 2019, contemplates a comprehensive update of the TASP development program and a concurrent update of development impact fees to reflect TASP infrastructure needs. The work by EPS is being provided in two parts, with the initial effort being an immediate (interim) update from 2014 to 2019 of the costs of the infrastructure program and an estimation of the appropriate per-unit fees (rates) to match the percentage of growth of those costs at 2019 levels. This simplified approach would provide a “catch up” fee schedule that will be applied by development categories to pending projects that have not yet obtained building permits prior to new fee resolution becoming effective. The second and more comprehensive element of the work by EPS will come later following completion of the pending update of the overall development scenario and related environmental work for the TASP. That pending TASP Update 2020 may reflect an expanded TASP area, new opportunities for development, and some limited additional public improvements to serve the potential development capacity.

Preparation of the attached fee resolution follows staff disclosure of updated fee estimates to Plan Area developers, businesses, property owners and other interested parties at the Community Development Roundtable meetings on June 6 and August 15, 2019. Staff has also had follow-up conversations and meetings with individual developers to discuss how the proposed fee changes would affect their pending projects.

The purpose of the impact fee is to proportionally share the costs of public infrastructure that benefit the new residences and businesses that are developed within the TASP area and thereby minimize adverse overburdening of other existing City facilities. The TASP commitment to parks, roadways, pedestrian

pathways, utilities and other services and amenities is an important part of the marketing of new development within the TASP area.

### **Analysis:**

The City has authority to impose development impact fees under the State's Mitigation Fee Act (Government Code Section 66000, *et seq.*) and as codified in Title VIII, Chapter 4 of the City's Municipal Code, which allows adjustment of such fees "from time to time" by resolution. The last fee resolution, currently in effect since March 2014, calls for infrastructure costs listed in the TASP Basic Infrastructure Program (BIP) to be adjusted automatically annually using a San Francisco area based cost index (Resolution 8344, Section 9). EPS has completed the infrastructure cost escalation to 2019, as provided in the attached Technical Memorandum dated May 29, 2019 (Exhibit A to the fee resolution).

Fees intended to address cost recovery on a proportional share basis from new development are adjusted periodically at the City's discretion. Fee share allocations vary by development type insofar as they include both the costs of acquisition and development of parklands and the costs of construction of facilities. The EPS memorandum presents an increase in fees based solely on the growth of impact fees between 2014 and 2019 and then allocates those fees across the various development categories based upon the benefits to each category. For the purposes of this interim adjustment, no changes have been made to either the components of the BIP or to the development scenario previously utilized for the adopted 2014 fee schedule.

The 2014 fee study had established a reallocation of fees across a reduced volume of anticipated development based upon a weaker economic climate at that time, but as the City recovered from the Great Recession the improving economic conditions brought impressive residential interest and production to the TASP area. Current figures show that 6,955 of the 7,109 planned housing units in the 2008 TASP are occupied, are under construction or are entitlement at this time. There are only 154 of the original 7,109 units in TASP that have not yet been entitled.

Permit records indicate that as of March 2019 and including the latest entitlements, there are approximately 1,964 (over 28%) of the entitled 6,955 units that have not yet been issued building permits. Some of those projects identified as under permit review could be issued permits prior to the effective date of this proposed fee resolution and therefore would not be subject to revised fees.

The EPS Memorandum calculates the fee allocations based upon design and construction costs that have cumulatively increased 16.2%, and land values that have cumulatively increased 43.8%. The total costs to fund the TASP BIP increased by nearly \$50 million, from \$233,788,200 (2014) to \$286,968,018 (2019), which represents an overall 22.75% increase for the combined commercial and residential components. To cover this increased cost, EPS has calculated a 2019 fee rate of \$40,487 per residential unit, \$26.49 per retail square foot, and \$42.52 per office square foot; no hotel rooms were included in the 2014 development scenario. Each fee category increase is tied directly to the associated cost increase attributable to that category of land use, as shown in Table 1 of the EPS Memorandum. For residential developments, where the increase in land values for parkland acquisition are a significant factor, the proposed \$40,487 per-unit fee is an increase of 23.5 percent, matching the 23.5 percent increase in costs attributable to residential impacts on infrastructure.

While the above fee increases are authorized by the Municipal Code and necessary to cover the costs of planned infrastructure, some developers have commented that this fee increase could have significant implications for the feasibility of their projects, especially pipeline projects that have already obtained entitlements but have yet to submit for or obtain building permits. While some of the developers' financial analyses and project pro-formas may have assumed the current TADIF, staff does not recommend reducing these fees from the amounts calculated by EPS as this would reduce the likelihood of covering infrastructure costs. However, to offset the impact on pipeline projects in the TASP and to incentivize construction of already approved projects, staff recommends that the City Council consider allowing a deferral of the payment of the TADIF until approval of occupancy instead of at building permit issuance, which is the current requirement. While fees would continue to be calculated at the time of permit issuance, allowing payment of these fees at occupancy can lessen the financial burden on development projects and assist with project financing and cash flow. The City would still collect the necessary funds for the BIP, but at a later date.

For example, a 100-unit project could have an impact fee obligation that increases 23.5 percent from just over \$3 million to just over \$4 million. The developer would lock in the fees at the time of issuance of permits by entering into a binding agreement at that time to pay the fees at some later agreed upon stage of occupancy (e.g., final inspection, temporary occupancy, 1<sup>st</sup> phase occupancy, or other) that could accommodate their financial constraints, such as allowing the fees to be covered by permanent financing as opposed to construction financing. The deferred payment agreement assures the City receives the fees to cover the costs of land acquisition and various infrastructure projects that benefit the development, while the developer locks in the actual fee amounts to guard against further increases and to perhaps financially separate that fee from other variables, such as rising construction costs. Staff would negotiate when the TADIF must be paid in the occupancy process.

If the City Council supports the deferred payment of the TADIF, staff recommends allowing the fee deferral for the pipeline projects listed in Exhibit B to the fee Resolution (i.e. projects that have already received Planning entitlements). Further, staff recommends setting the deferred payment provision to expire twelve (12) months after the effective date of the fee increase. Since the effective date is sixty (60) days after adoption, if the City Council adopts the fee increase that goes into effect in December 2019, the fee deferral period would expire in December 2020. Pipeline projects must have filed a complete building permit application with the City before the expiration date to qualify for the fee deferral. For applications submitted after this date, payment of the TADIF would once again be required at building permit issuance. This provision would not affect the timing for payment of any other fees.

### **Policy Alternatives:**

#### **Alternative 1:**

Adopt the maximum allowable fee in accordance with EPS Technical Memorandum and as recommended by staff and require all developers within the TASP to pay the increased TADIF prior to issuance of a building permit, which is the current requirement.

Pros: The increased fees will maximize cost recovery to fund the BIP, recognizing that projects that may receive a building permit before the effective date of the fee increase (60 days after adoption) would still pay the lower fee.

Cons: An increase in fees along with earlier payment at building permit issuance can affect the financial feasibility of approved projects and discourage interest in future development. A sudden and sharp increase in development fees for pipeline projects without buildings permits could cause delays, postponement, or cancellation of projects.

#### **Alternative 2:**

Do not increase the TADIF in accordance with the EPS Technical Memorandum and adopt a lower fee or maintain the current 2014 fees.

Pros: Development projects would proceed based on a lesser or the current TADIF and the financial feasibility of TASP pipeline projects would be minimally or less affected.

Cons: Maintaining the current TADIF or reducing the fee from the maximum allowed would result in the City collecting less funds than are required for the BIP. The City would incur a financial deficit and additional sources of funds would have to be identified to make up for the shortfall. Some developers may not pay their proportional share of necessary public improvements that will benefit their projects. Potentially higher per-unit fees would be allocated to future projects with any subsequent fee update to compensate for lower cost recovery in this current cycle.

### **Fiscal Impact:**

The increased TADIF would improve cost recovery and increase the amount of funds that are available to fund the BIP, which consists of roadway, sewer and water system infrastructure improvements and parks and community facilities to serve existing and future residents and businesses in the TASP area. The EPS analysis indicates that the recommended TADIF increase could generate up to \$53,179,818 in additional funds for the BIP depending on the amount and types of actual projects that will eventually be built.

**California Environmental Quality Act (CEQA):**

The action being considered is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15273 insofar as establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment.

**Recommendations:**

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) Consider the exemption in accordance with CEQA.
- 3) Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B of the Resolution, with the deferred payment provision to expire twelve (12) months after the effective date of the fee increase.

**Attachments:**

Resolution

Exhibit A to Resolution: EPS Technical Memo dated May 20, 2019

Exhibit B to Resolution: List of Pipeline Projects in TASP



## ***TECHNICAL MEMORANDUM***

To: Steven McHarris, City of Milpitas

From: Teifion Rice-Evans, Michael Nimon, and Walter Kieser

Subject: 2019 Update to Transit Area Development Impact Fee;  
EPS #181167

Date: May 20, 2019

This memorandum calculates the potential new 2019 Transit Area Development Impact Fee. The updated 2019 fee schedule is based on changes in the cost consistent with the adjustment approach described in City Resolution No. 8344, Section 9: Annual Adjustments. Because the City has not adjusted its fees since 2014, this adjustment reflects the 5-year period, 2014 to 2019.<sup>1</sup>

### **Context**

The City of Milpitas (City) adopted the Transit Area Specific Plan (TASP) in 2008. The Specific Plan sets forth land use policies which allow for the intensification of development in the 437-acre Transit Area with multifamily housing, office, and retail development. To support more residents and workers with appropriately scaled utilities, parks, and community facilities, the City developed a Basic Infrastructure Program (BIP) of improvements. To ensure new development in the TASP paid its fair share of the costs of these improvements, the City enacted the Transit Area Development Impact Fee (TADIF) in 2008 with allowances for periodic adjustments as costs change.

*Economic & Planning Systems, Inc.  
One Kaiser Plaza, Suite 1410  
Oakland, CA 94612-3604  
510.841.9190 tel  
510.740.2080 fax*

*Oakland  
Sacramento  
Denver  
Los Angeles*

**www.epsys.com**

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<sup>1</sup> As a point of reference, it is estimated that the City would have received an additional \$14.6 million in TASP infrastructure fee revenues if it had made annual adjustments in the years following 2014.

The TADIF is a development impact fee adopted by the City of Milpitas pursuant to the provisions of Government Code Section 66000 (the Mitigation Fee Act) and per the City Code Title VIII-4.2.01. The TADIF fees were authorized by ordinance and were set and adopted by resolution, based on the technical analysis in the *Milpitas Transit Area Infrastructure Financing Technical Report*, dated August 2008.

Since 2008, the City has updated the TADIF, both through the process of annual adjustment as well as through more comprehensive periodic updates. The last comprehensive update occurred in 2014 with a new TADIF schedule adopted through Resolution No. 8344 and supported by the technical analysis in the *Transit Area Development Impact Fee Report*, dated February 2014. That Resolution was passed and adopted in March 2014 and the fees were effective immediately with the subsequent passage that evening of an emergency resolution (Resolution 8345). No annual adjustments or comprehensive periodic updates have been conducted since 2014.

## Updated 2019 Fees

**Table 1** shows the potential fee increase under the annual adjustment approach outlined in Resolution No. 8344, Section 9: Annual Adjustments. As shown, the cumulative annual adjustments for 2014 to 2019 result in an increase of 16.2 percent for nonresidential uses (retail and office development) and 23.5 percent for residential uses. The supporting technical calculations are provided below.

**Table 1 Potential Increase in TADIF Fees**

Item	2014 Fee Schedule*	Escalation Factor	2019 Fee Schedule*
Residential	\$32,781	23.5%	\$40,487 per unit
Retail	\$22.80	16.2%	\$26.49 per sq. ft.
Office	\$36.60	16.2%	\$42.52 per sq. ft.
Hotel (1)	\$0.00	na	\$0.00 per sq. ft.

\*Note: includes a 2% admin component.

(1) The 2014 analysis discontinued a fee on hotels.

The City has the option to increase the fees to this new level, to increase them by a smaller proportion, or to leave them as is. Previously, the City has decided to increase fees to their maximum allowable levels to require new TASP development to fully cover its proportionate share of the infrastructure/ improvement costs in the Basic Infrastructure Program. To the extent, the City enacts fees at a below the full/ maximum level, the City would need to "fill the gap" by providing infrastructure/ improvement funding from the General Fund or others sources.

## Fee Update Calculations

The 2014 Resolution No. 8344 (TADIF Resolution) describes the process for fee adjustments in Section 9: Annual Adjustments. Section 9 of the TADIF Resolution states the following:

"The total design, construction, and contingency costs of each infrastructure item in the Basic Infrastructure Program shall be automatically adjusted each fiscal year by the Finance Director or his or her designee using the Engineering News Record (ENR) Construction Cost Index for the San Francisco Bay Area. The right of way or land costs of each item shall be automatically adjusted each fiscal year using the fair market value for an acre of land in the City as determined by the City Council pursuant to XI-1-9.07.1 "Amount of Fee In Lieu of Land Dedication.""

The technical calculations described below follow this methodology, applying the change in the ENR Construction Cost Index to the 2014 estimates of non-land infrastructure/ improvement costs and applying the change in the estimated land values to the 2014 estimates of parkland costs. Because the Basic Infrastructure Program's Park/ Plaza/ Community Facilities costs are only allocated to residential development, the change in parkland values/ costs only affects the residential fee. To account for this, the analysis shows the distribution of costs between residential development and non-residential development and applies distinct percentage fee adjustments for each.

**Table 2** shows the percent changes in costs between 2014 and 2019 based on the ENR Construction Cost Index and the estimated land values. As shown, the increase in the construction cost index was 16.2 percent and the increase in land values was 43.8 percent. The average land value in the TASP area in 2014 was estimated at about \$2.8 million per acre. The new land value of about \$4.0 million per acre in the TASP area was provided by Associated Right of Way Services Inc. in an April 2019 appraisal.

**Table 2 Basic Infrastructure Program Cost Change Indices**

Item	Unit of Measure	2014	2019	Total Increase 2014-2019
Engineering News Record (1)	Indexed Number	6,232	7,240	16.2%
Land Appraisal (2)	Land Value per Acre	\$2,787,840	\$4,007,520	43.8%

(1) Represents June 2014 and May 2019 (latest available) Engineering News Record (ENR) construction cost index for the San Francisco metro area.

(2) Land value estimates in TASP area provided by Associated Right of Way Services, Inc.

The 2014 estimate was used in the 2014 TADIF fee analysis. The 2019 estimate was determined in April 2019.

Sources: Engineering News Record; Associated Right of Way Services, Inc.; 2014 2014 Transit Area Development Impact Fee Report (February 2014); Economic & Planning Systems, Inc.

To determine the appropriate increases in the fee levels, these indexed increases in costs were applied to the detailed 2014 estimates of Basic Infrastructure/ Improvement costs by category with costs allocated by residential and non-residential use. As shown in **Table 3**, the total net TASP Basic Infrastructure/ Improvement program totaled \$233.8 million (this represented the

appropriate allocation of Basic Infrastructure Program costs to new TASP development). About \$209.5 million of these costs were allocated to residential development, including about \$97.8 million in Parks/ Plazas/ Community Facilities costs (of which \$55.7 million were associated with park-related land acquisition costs). About \$24.3 million of these costs were allocated to nonresidential development; nonresidential development did not have any Parks/ Plaza/ Community Facilities or Linear Parks/ Trails costs allocated to it.

**Table 3 2014 Basic Infrastructure Program Costs and Allocations (2014 \$\$)**

Infrastructure Category	Net TASP Cost in 2014 \$\$		
	Residential Total	Commercial Total	Total
Roadway	\$36,611,862	\$10,278,905	\$46,890,766
Sewer	\$14,835,780	\$2,535,401	\$17,371,181
Water	\$30,342,702	\$4,427,762	\$34,770,464
Parks/Plazas/Community Facilities			
Right of Way Acquisition	\$55,735,145	\$0	\$55,735,145
Other Parks and Comm. Facility Costs	\$42,183,080	\$0	\$42,183,080
Linear Parks/Trails	\$3,739,634	\$0	\$3,739,634
Specific Plan Preparation & PFP Update	<u>\$1,586,273</u>	<u>\$123,723</u>	<u>\$1,709,995</u>
<b>Subtotal</b>	<b>\$185,034,475</b>	<b>\$17,365,790</b>	<b>\$202,400,265</b>
Regional Traffic Mitigation	\$24,504,177	\$6,883,758	\$31,387,935
<b>Total Costs</b>	<b>\$209,538,652</b>	<b>\$24,249,548</b>	<b>\$233,788,200</b>

Source: 2014 Transit Area Development Impact Fee Report (February 2014); Economic & Planning Systems, Inc.

**Table 4** illustrates how the indexed increases calculated in **Table 2** are applied to the 2014 infrastructure cost schedule to adjust Basic Infrastructure Program costs to 2019 dollars and to determine the appropriate percentage increases in fees in proportion to the increase in costs. As shown in **Table 4**, the 16.2 percent construction cost index is applied to all infrastructure cost items, except parkland/ right of way acquisition, where the 43.8 percent increase in land values is applied. The resulting total Basic Infrastructure Program cost estimate in 2019 dollars is about \$287 million, representing an overall increase of 22.75 percent in net TASP costs between 2014 and 2019. The residential component of the net TASP infrastructure costs increased from \$209.5 million to \$258.8 million, an increase of 23.5 percent. The commercial component of the net TASP infrastructure costs increased from about \$24.3 million to about \$28.2 million, an increase of 16.2 percent. These increases in costs represent the appropriate maximum adjustments in the residential and nonresidential fees respectively and are applied in **Table 1** (above) to indicate the potential increase in TADIF fees.

## Additional Steps

Beyond the fee adjustment associated with this analysis, the City is also conducting a broader assessment of the TASP. This is expected to include a review of all infrastructure/ improvement items in the Basic Infrastructure Program, an assessment of the costs of these improvements, as well as a broader consideration of the potential to include more development in the TASP and/or to expand the geographic boundary of the TASP. This review and evaluation may result in the need for a more comprehensive update to the TASP infrastructure program and associated fees. If that is the case, the TASP fees would be updated again at the appropriate time.

**Table 4 Adjusted 2019 Infrastructure Program Costs and Overall Increases**

Infrastructure Category	Indexed Increase (1)	Net TASP Cost in 2019 \$\$		
		Residential Total	Commercial Total	Total
Roadway	16.2%	\$42,532,928	\$11,941,264	\$54,474,192
Sewer	16.2%	\$17,235,102	\$2,945,439	\$20,180,541
Water	16.2%	\$35,249,886	\$5,143,843	\$40,393,729
Parks/Plazas/Community Facilities				
Right of Way Acquisition	43.8%	\$80,119,270	\$0	\$80,119,270
Other Parks and Comm. Facility Costs	16.2%	\$49,005,153	\$0	\$49,005,153
Linear Parks/Trails	16.2%	\$4,344,428	\$0	\$4,344,428
Specific Plan Preparation & PFP Update	16.2%	<u>\$1,842,813</u>	<u>\$143,732</u>	<u>\$1,986,545</u>
<b>Subtotal</b>		<b>\$230,329,580</b>	<b>\$20,174,278</b>	<b>\$250,503,858</b>
Regional Traffic Mitigation	16.2%	\$28,467,123	\$7,997,036	\$36,464,160
<b>Total Costs</b>		<b>\$258,796,703</b>	<b>\$28,171,315</b>	<b>\$286,968,018</b>
<b>% Increase Over 2014 Cost (2)</b>		<b>23.5%</b>	<b>16.2%</b>	<b>22.75%</b>

(1) All cost categories are escalated based on the ENR construction cost index with the exception of the parkland/ right of way acquisition cost subcategory, which is escalated based on the land value increase. See Table 2 for derivation of % increases.

(2) Represents total 2019 costs divided by the total 2014 costs shown in Table 3. These percentage cost increases for the 2014 and 2019 period for residential and commercial development are then applied to the existing 2014 fees to determine the updated 2019 fee schedule shown in Table 1.

Sources: 2014 Transit Area Development Impact Fee Report (February 2014); and Economic & Planning Systems, Inc.

Resolution \_\_\_\_

**Exhibit B**

TASP Pipeline Projects as of August 1, 2019

Project Name	Address	Site Development Permit #	Dwelling Units
Piper/Swenson Tower	1256 Piper Drive	P-SD14-0025	210
Summerhill - Phase 2	1500-1646 Centre Pointe	P-PP15-0001 / P-SD15-0012	361
1980 Tarob (Parkside)	1980 Tarob Court	P-SD15-0015	59
1992 Tarob	1992 Tarob Court	P-SD16-0010	53
551 Lundy Street	551 Lundy Street	P-SD16-0009	89
Lantana	720 Montague Expressway	P-SD15-0010	216
The District – Lot 3	1310-40 McCandless Drive	P-SD15-0006	383
The District – Lot 4	1410 McCandless Drive	P-SD15-0006	213
Zhang Condos	1316 South Main Street	P-SD14-0021	18
Main Street Condos	1380-1400 South Main Street	P-SD17-0013	220
355 Sango Court	355 Sango Court	P-SD17-0017	102
Tru-Life Condos	2001 Tarob Court	P-SD18-0014	40
<b>Total Unit Count</b>			<b>1,964</b>

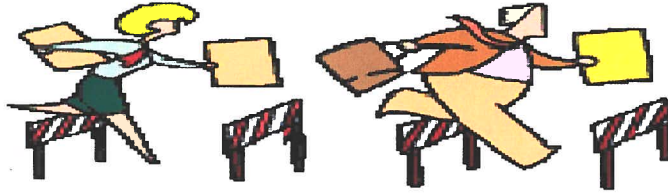


# CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479  
GENERAL INFORMATION: 408-586-3000, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

10/01/2019

Agenda Item No. 11



## ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION





October 1, 2019

Honorable Mayor and City Council  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

City Clerk's Office  
OCT 01 2019  
RECEIVED

Dear Mayor and Members of the City Council,

I represent The Core Companies and we are the developers of the 220-unit multifamily project located at 1380-1400 South Main Street. I am writing regarding the proposed Transit Area Specific Plan (TASP) fee increase being considered on the October 1st City Council agenda.

We have been working with Staff since June 2019 when the item was reviewed at a developer round table meeting. The rationale with raising the fee was outlined by Staff as a need to keep up with current construction costs and land prices. We understand the need for the fee increase but find great hardship in the timing and severity in percentage increase with which the fee increase is proposed. Under the Staff proposal, the TASP fee would increase from \$32,781 per unit to \$40,487 per unit. This is almost a 25% increase and, for our project, is close to \$1.7MM in unanticipated fees that overly burden our project.

1380-1400 South Main Street received entitlement approvals in October 2018 which, in parallel with accepting the project's conditions of approval, solidified a substantial amount of the project's construction cost. We then proceeded to acquire the land in December 2018. The proposed fee increase was initiated by Staff with a consultant's study in January 2019 and finalized in May 2019. It was first brought to our attention in June 2019. This timing left us with little ability to adjust given such a substantial change in fees.

We sympathize and understand the need for additional TASP revenues. However, under the Staff proposal, the TASP fee increase leaves entitled pipeline projects with little leeway to proceed as fiscally viable but also retain the scheme that was approved by council. After voicing our concern, Staff has been working on solutions and communicated an option where pipeline projects receive deferred fees at \$40,487 per unit. We recognize that this helps offset financing expenses, yet it still burdens entitled pipeline projects with unanticipated and substantial costs that challenge the financial viability of the project.

Milpitas has always been a leader in providing quality housing for the region and providing the services and infrastructure needed to support residents in new communities. We ask the City Council and Staff to understand that while there is a need for infrastructure improvement fees in the TASP area, it is very difficult for entitled residential projects to pick up such large fee increases with little time to plan or ability to adjust project design aspects. We are requesting that City Council create a steady, predictable fee structure that the development community can count on. With the time it takes projects to go through the development and construction process, predictability creates the best environment for our business and others to plan and execute on quality, industry-leading projects. We urge City Council to consider the timing and impact of these fees on our project and to allow entitled pipeline projects to proceed under the current fee structure.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle Zaylor". The signature is stylized with a large "K" and a long, sweeping underline.

Kyle Zaylor  
Senior Project Manager  
The Core Companies

## Attachment F: TADIF Recommendation Comparison

TIER	BUILDING PERMIT STATUS	STAFF RECOMMENDATION Revised (November 19, 2019)	ALTERNATIVE 1: Original Staff Recommendation (October 1, 2019)	ALTERNATIVE 2: No Fee Increase
Current Fee	Permit issued before fee increase Effective Date	\$32,781/unit Paid at permit issuance		
Assumes adoption November 19, 2019 (Effective Date - January 19, 2020) Total allowed fee increase - \$7,706/unit				
Tier 1	Permit application submitted by February 19, 2020	\$34,707/unit (current fee + 25% allowed increase) Paid at permit issuance	\$40,487/unit (current fee + 100% allowed increase) Payment deferred until occupancy	To be determined
Tier 2	Permit application submitted by May 19, 2020	\$36,634/unit (current fee + 50% allowed increase) Paid at permit issuance		
Tier 3	Permit application submitted by November 18, 2020	\$40,487/unit (current fee + 100% allowed increase) Payment deferred until occupancy		
Tier 4	Permit application submitted after November 18, 2020	\$40,487/unit (current fee + 100% allowed increase) Paid at permit issuance		

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## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve Updated City of Milpitas Facility Use Manual</b>
<b>Category:</b>	Leadership and Support Services
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	<b>Renee Lorentzen, 408-586-3409, Christopher Diaz, 408-586-3040</b>
<b><u>Recommendation:</u></b>	Approve the Updated City of Milpitas Facility Use Manual

### **Background:**

The City of Milpitas' Facility Use Manual is the guiding document for the general use and rules of the City's Indoor and Outdoor facilities, fields and parks (Facility). At the Special City Council Budget Study Session on March 12, 2019, Council directed staff to bring back modifications to the Facility Use Manual that would enable the use of City facilities by City Councilmembers for non-campaign related community programs and events. These modifications are located on pages 4-8 of the Manual. A copy of the full manual can be here:

<http://www.ci.milpitas.ca.gov/wp-content/uploads/2016/08/Facility-Manual-Updated-062016-FINAL.pdf>

### **Analysis:**

Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

City Councilmembers wishing to host a program or event in a City-owned Facility could implement a request and approval process as part of the City of Milpitas Facility Use Manual, as long as the proposed program or event is non-campaign related and has a wide-reaching public purpose serving the Milpitas community at large.

To ensure compliance with state law and City Council policy, the review and approval of a Councilmember's request to host a program or event in a City-owned Facility would go through a process ensuring the documentation of public purpose, availability of facility space, and approval of funds associated with the use of a City-owned Facility by the City Council. City Councilmember requests would be submitted on a request form to: 1) describe the proposed program or event scope, 2) state additional community partners, 3) explain why the event is not campaign related, and 4) document the intended public purpose. The request form would be reviewed by the City Attorney's office and City Manager's office for public purpose review and determination of an available facility. Once reviewed, the request would be agendized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law or if the use is inconsistent with the Councilmember's written request.

It is important to note that the focus of this update was on use of City facilities by City Councilmembers and is not intended to be a comprehensive update of the Facility Use Manual. Per the approved five-year Capital Improvement Plan, staff will be initiating a Recreation and Parks Master Plan update in fall 2019. Based on the recommendations of the master plan, staff may bring forward additional changes to the Facility Use Manual for Council consideration.

**Policy Alternatives:**

**Alternative 1:** Do not approve the updated City of Milpitas Facility Use Manual

Pros: Staff resources spent on managing individual City Councilmember program or event requests would be spent on previously approved programs and projects

Cons: City Councilmembers will not be able to request the use of City facilities for individual use.

Reason not recommended: With increasing interest in City Councilmembers being able to host programs and events in City Facilities, approved language documenting allowable use and process for approval is necessary.

**Fiscal Impact:**

At this time, the frequency of use and intended City Facilities are unknown, making an assumption of Fiscal Impact difficult. If the Updated City of Milpitas Facility Use Manual is approved, staff would track the rental revenue value of the facilities used for City Councilmember hosted programs and events at the resident rate. This Fiscal Impact data will be reported to the City Council mid-year.

**Recommendation:**

Approve the Updated City of Milpitas Facility Use Manual.

**Attachments:**

- 1) Draft City of Milpitas Facility Use Manual
- 2) Draft City Councilmember Program and/or Event Host Request Form

# **CITY OF MILPITAS FACILITY MANUAL INDOOR AND OUTDOOR FACILITIES**



**PLEASE NOTE FEES AND INSURANCE REQUIREMENTS  
ARE SUBJECT TO CHANGE**

**Approved by City Council 6/21/168/20/19**

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**GENERAL RENTAL INFORMATION**

1. Rental facilities may be viewed during regular business hours, by appointment only, provided no other functions are scheduled. To make an appointment, please call the desired rental facility.

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2. No phone, mail or faxed reservations are accepted.

Permits for indoor and outdoor facilities must be obtained in person at the locations listed below:

*Permits for use of the Community Center, Senior Center, Sports Center, Sal Cracolice Center, Higuera Adobe, City Parks, and outdoor facilities:*

**Community Center:** 457 E. Calaveras Blvd., Monday - Thursday, 8:00 am to 6:00 pm, Friday, 8:00 am to 5:00 pm, 408-586-3210.

**Barbara Lee Senior Center:** 40 N. Milpitas Blvd., Monday - Friday, 8:30 am to 4:30 pm, 408-586-3400.

**Sports Center:** 1325 E. Calaveras Blvd., Monday - Thursday, 6:00 am to 9:00 pm, Fridays, 6:00 am to 5:00 pm, Saturday, 8:00 am to 1:00 pm, 408-586-3225.

*Permits for use of the Police Department Community Room can be obtained at:*

**Milpitas Police Department:** 1275 N. Milpitas Blvd., Monday - Friday, 8:00 am to 5:00 pm, 408-586-2400.

*Permits for use of the City Hall Rotunda can be obtained at:*

**City Clerk's Office:** 455 E. Calaveras Blvd., Monday - Friday, 8:00 am to 5:00 pm, 408-586-3000.

*Special Event permits can be obtained at:*

**City of Milpitas Planning Department:** 455 E. Calaveras Blvd., Monday - Friday, 8:00 am to 5:00 pm, 408-586-3279.

1. Facilities may be reserved for use anytime from 7:00 am to 12:00 am midnight with the exception of the Police Department Community Room, which is available for residents only from 8:00 am to 11:00 pm. Rental fees are charged from the time you or your caterers, florists, etc. enter the facility until you exit the building. When planning your rental times, be sure to include set-up time for decorating, caterers, florist, etc. and clean up time required after event.

### RESERVATIONS TIMELINE

1. The City of Milpitas, must receive a Facility Use Application, a cleaning & damage deposit and an application fee before any function may be scheduled. **All fees must be paid in the form of a cashier's check, money order, cash or credit card. Cashier's check or money orders must be payable to: City of Milpitas. No personal checks will be accepted.** Final rental fees, set-up diagram, proof of insurance (if applicable) are due 30 days prior to the rental date and must be paid in person. Any rental requests made less than 30 days requires approval by the Recreation Services Manager or authorized representative. All fees are due at the time of the reservation
2. Generally, reservations can be made according to these timelines: Milpitas Residents – Up to 1 year in advance (two forms of proof of residency required, photo ID & current utility bill); Non-Residents – Up to 6 months in advance unless stated otherwise in this manual. Resident non-profits, please see the guidelines below.

### RESIDENT NON-PROFIT ORGANIZATION TIMELINE

Organizations may reserve up to three dates on one application per quarter. Milpitas-based non-profits must submit, every January, the following:

1. A current roster with 51% or more Milpitas Residents and a California State letter verifying current non-profit status.
2. A letter listing two (2) individuals authorized to make reservations, changes or cancellations.
3. A mission statement of the organization's purpose.

For Non-Profit Meetings in  
**January-March**  
**April-June**  
**July-September**  
**October-December**

Non-Profit Application Accepted  
**December 1**  
**March 1**  
**June 1**  
**September 1**

For more information regarding rental policies, please refer to the Facility Use Rules & Regulations. Should you have any questions, please call the Milpitas Community Center at 408-586-3210.

## I. **PRIORITIES**

Priorities are designed to determine fee and reservation status.

- 1.1 To provide for public activities in the best interest of the Community, City facilities will be reserved in accordance with the following group priorities:

Priority I. City administered programs, including any program hosted by a councilmember for a non-campaign related community event with a wide-reaching public purpose serving the Milpitas community at-large, as determined by the City Manager in consultation with the City Attorney. Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

Any councilmember request under Priority I shall be on a form established by the City Manager. In the form, the councilmember shall state why the event is not campaign related and provide a documented public purpose consistent with state law. The City Attorney shall review the form to ensure compliance with state law. —Approval of councilmember requests under Priority I shall be approved by the City Council

- |                  |                       |
|------------------|-----------------------|
| 1. No deposit    | 3. No staff fee       |
| 2. No rental fee | 4. No application fee |

Priority II. Programs or activities for Senior Citizens and approved co-sponsored groups which are principally composed of local residents (51% or more), public schools located in Milpitas, the Milpitas Chamber of Commerce and governmental agencies(excluding staff trainings, poll worker trainings, staff retirement parties, staff / volunteer recognition events).

1. No deposit
2. Rental fee according to Fee Schedule / Joint Use Agreement
3. Staff fee according to Fee Schedule / Joint Use Agreement
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

Priority III. Non-profit groups that are organized for recreational, social, cultural, religious or civic purposes and whose membership is principally composed of local residents (51% or more) or who is based in Milpitas and renting no more than 3 rental dates per quarter.

1. Facility deposit according to the Fee and Deposit Schedule
2. Rental fee according to Fee Schedule
3. Staff fee according to Fee Schedule
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

Priority IV. Any other group, business, private school or individual resident of the City of Milpitas.

1. Facility deposit according to the Fee and Deposit Schedule
2. Rental fee according to Fee Schedule
3. Staff fee according to Fee Schedule
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

Priority V. Any non-resident group, business or individual.

1. Facility deposit according to the Fee and Deposit Schedule
2. Rental fee according to Fee Schedule
3. Staff fee according to Fee Schedule
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

## II.

### APPLICATIONS

~~1.A.~~ Permits for use of City facilities (indoor and outdoor) shall be issued by the City upon the approval of the City Manager or authorized representative and shall be consistent with City regulations governing such use. No blanket or on-going permits will be allowed. Applications for consecutive-day events will be considered only during minimal use periods.

~~2.B.~~ The use of those facilities shall not be inconsistent with other such use for City purposes or interfere with the regular conduct of City programs. City sponsored programs shall receive first priority over use by any other group or organization. The City reserves the right, if necessary, to preempt, or revoke permit (if previously issued) for the use if for any reason it becomes unavoidably necessary for the City to utilize said facility or facilities at the same time. If and when such action is necessary, the City will give applicants as much advance notice as possible. The City also reserves the right to revoke any approval provided to a Milpitas councilmember under Priority I if the use of the City facility violates state law or if the use is inconsistent with the councilmember's written request.

~~3.C.~~ Applications for use of indoor City facilities and parks will not be accepted more than one (1) year to the date prior to proposed use for Priorities II-IV.

~~4.D.~~ Priority V applications will not be accepted more than 6 months prior to the proposed use.

~~5.E.~~ Applications for the Milpitas Sports Center Large Gym will not be accepted more than 90 days prior to proposed use for Priorities II-V.

~~6.F.~~ For outdoor City facilities and sports fields, applications are accepted six (6) months to the date prior to the proposed use for Priorities II-IV and 90 days for Priority V.

~~7.G.~~ Applications will not be accepted with less than 30 days prior to the proposed date, unless authorized by the Recreation Services Manager or his/her authorized representative.

~~8.H.~~ In cases where the earliest date to reserve a facility falls on a weekend (Saturday or Sunday) or City holiday, reservations will be accepted on the preceding weekday. Should the preceding weekday be a City holiday, applications will be accepted on the prior workday.

~~9.I.~~ Priority III organizations may reserve up to three dates on one application per quarter and must submit an application according to the reservation schedule listed on Page 5. Groups may not use a facility without an application on file. Should additional maintenance or custodial services be required, or the group exceeds the reserved rental hours, the groups will be assessed additional fees or charges as necessary.

~~10.J.~~ Priorities II and III may reserve indoor facilities for one-time special event or party under the set Fee Schedule for Priority IV rentals / charges.

~~11.K.~~ Priority III groups may drop off Facility Use Application(s) with requested dates and times as outlined above during facility business hours.

~~12.L.~~ On the following business day, the designated City representative will review all Priority III applications with requested dates and times and distribute dates equally between any groups requesting the same dates. Should there not be an equal amount of dates available, the city representative will do a lottery pull for any extra date and

schedule accordingly. Rental applicants will be notified regarding the status of their application(s).

- ~~13.~~M. Once the facility reservations are confirmed, the groups will be required to remit payment for the applicable fees (i.e. application fee, deposit and rental fees according to the Fee Schedule) within 3 business days. Should payment not be received within 3 business days, the dates will be released. (Approved by City Council on October 16, 2007).
- ~~14.~~N. All applications for use must be signed by an adult (minimum of 18 years age) and said adult shall agree to be responsible for the facility use. Groups composed of minors 17 years of age and under must be supervised by one (1) adult for every 15 minors. All activities must have adult supervision to ensure adequate control. (Please refer to rule 6.4, regarding no alcohol at youth functions). The applicant or applicant designee must be present at all times during the rental. At the beginning of the rental, the applicant and facility staff shall meet to review the pre-facility inspection guidelines. Prior to leaving the facility, the applicant and facility staff shall confer and sign off on the facility inspection report.
- ~~15.~~O. Permits normally will not be issued for a period longer than one (1) day. Rental applicant may reserve a facility for consecutive days whenever the facility is in the periods of minimal demand. A separate deposit will be required for each rental day, and property / equipment cannot be left on the premises between rentals without approval from Recreation Services Manager or authorized representative.
- ~~16.~~P. Priority IV and V users may only reserve fields or sports facilities for three consecutive days during minimal use periods.
- ~~17.~~Q. City Facilities are closed on all holidays observed by the City of Milpitas. Reservations are not accepted for New Year's Day, Martin Luther King Jr.'s Birthday, ~~Lincoln's~~ Cesar Chavez Birthday, Presidents' Day, Easter Sunday, Memorial Day, July 4<sup>th</sup>, Labor Day, Veterans Day, Thanksgiving, Friday following Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve .
- ~~18.~~R. A staff person shall be required for an indoor/outdoor facility where permits are granted involving the opening and closing of a building. Charges for necessary City personnel will be assessed according to the Fee Schedule. If more than 150 people are scheduled to attend, additional staff may be required.
- ~~19.~~S. No rental shall begin prior to 7:00 am and all activities shall cease at 12:00 am midnight for indoor facilities, and dusk for outdoor facilities, unless prior approval has been received from Director of Recreation and Community Services or authorized representative.
- ~~20.~~T. Any falsification of information on the application will result in the loss of all fees, including the deposit.

### **III. FEES AND CHARGES**

- ~~1.~~A. Current rates are established by the Milpitas City Council. City staff does not have the authority to deviate from these rates.
- ~~1.~~B. No reservation will be accepted without the specified non-refundable application fee and the deposit. The deposit must be in the form of a cashier's check, money order, cash, or credit card, (personal checks are not accepted). Cashier's check or money orders must be made payable to: City of Milpitas. The deposit is refundable after the rental date and will

be returned to the applicant by mail in the form of a City check approximately 30 days after the rental, unless damages, additional maintenance or services were assessed. Checks are returned to the applicant listed on the Rental Application Form. Please contact us immediately should an address changes occur. Additional insurance and fees may apply.

~~1.C.~~ Charges begin when a facility is entered for any purpose, i.e. decorating, catering, set-up etc. Groups will be assessed charges according to their reservation priority, nature of activity and/or services and staff required. Hours of use may not be changed less than 30 days prior to the rental date without staff approval. Additional insurance and fees may be required depending on the type of function. In cases where the deposit does not cover the damage, the rental applicant will be billed.

~~1.a.~~ Fees will not be pro-rated for events or activities that finish prior to the approved permitted times. Not honoring approved hours may result in suspension of facility use and additional charges.

~~1.D.~~ Rental fees shall be paid at least 30 days in advance of the rental date, or permit shall be declared invalid. Payment must be made by cashier's check, money order, cash, or by credit card. Cashier's check or money orders must be made payable to: City of Milpitas.

~~1.E.~~ Waiver of rental fees or deposits must be approved by City Council. Fees for staff, insurance, and application are not eligible to be waived. To seek a fee waiver, the rental applicant must submit a written form with the City Clerk's office at least 90 days prior to the proposed date of use. The request will be reviewed by City Council at a regularly scheduled City Council meeting.

~~1.F.~~ A Confirmed Rental must have the following:

~~1.a.~~ A completed, signed and approved Facility Use Application on file.

~~1.b.~~ Payment of appropriate Cleaning and Damage Deposit, Application Fee and applicable insurance fees (if necessary).

~~1.c.~~ Signed Important Reminders for Permit Applicants on file.

~~1.d.~~ Signed Rental Applicant Clean Up & Decorating Policies Responsibilities on file.

~~1.G.~~ Groups participating in City sponsored leagues or City co-sponsored programs, such as end of the year banquets, are exempt from fees and deposits for regularly scheduled games or activities. Fees and deposits will apply for all other use of the facilities by such groups.

~~1.H.~~ The rental applicant must come in person to request and process a facility rental cancellation for all facilities. The request must be done in writing on forms provided by the City. Mail or phone cancellations will not be accepted. Please note: All facility application cancellations will forfeit the application fee. Photo identification is required for cancellations.

~~1.a.~~ A full refund will be granted, provided a cancellation is made within 91 days or more of the rental date.

~~1.I.~~ If the cancellation is made 46-89 days prior to rental date, 50% of the deposit will be forfeited.

~~1.J.~~ If the cancellation is made with 45 days or less prior to rental date, 100% of deposit will be forfeited.

~~4.K.~~ If there are extenuating circumstances that require a cancellation within 45 days of the rental date, a refund may be approved by Recreation Services Manager or authorized representative. Evidence of extenuating circumstance may be requested for verification purposes.

~~4.a.~~ Should the City cancel said reservation, a full refund of paid rental fees will be issued.

~~4.b.~~ Should a request for a change of rental date be made, a rescheduling fee of \$100 will be charged provided the date and staff are available, and there are 30 days remaining prior to the original rental date. Changes requested 29 days or less prior to the rental date will require management approval. A new rental date cannot exceed 365 days from the original requested rental date.

~~4.c.~~ Any group not abiding by the Facility Use Rules and Regulations will forfeit entire rental deposit.

~~4.L.~~ Depending on the nature of your event (i.e. alcohol being served, attendance at event, collection of money, youth function, fundraising event open to the public which includes presold tickets, etc.) security guards and liability insurance may be required at the discretion of Recreation Services Manager or authorized representative.

#### IV. SET-UP/CLEAN-UP

~~4.A.~~ At least 30 days before the rental date, the user group must submit a room set-up diagram. Changes to the room set-up diagram may be made up to two weeks prior to the event.

~~4.B.~~ The rental applicant is not allowed to alter any indoor facility.

~~4.C.~~ The rental applicant is responsible for obtaining pre-approval and permission from Recreation Services staff prior to altering the sports fields in any manner (striping, temporary fencing, etc.)

~~4.D.~~ **It is required that the rental applicant check in and out with staff and complete a pre and post inspection form upon arriving/leaving the facility.**

~~4.E.~~ The rental applicant shall report any unsafe condition to Recreation Services immediately and suspend activities until corrections or repair has ensured that the situation is safe for participants or spectators.

~~4.F.~~ Rental applicant is responsible to ensure that cleanup has occurred following any rental.

~~4.G.~~ City facilities must be protected by the user from damage or mistreatment. Groups using City facilities must be responsible for the condition in which the facility and its equipment are left. Groups must leave the facility free of litter such as paper, food or drink. Failure to leave the facility in the condition it was in prior to the rental will result in the user group being charged accordingly.

~~4.H.~~ Rental applicant is responsible to ensure that clean-up has occurred following any rental. Garbage cans are provided for clean-up purposes. If the facility is not cleaned, fees will be incurred.

~~4~~I. Upon leaving the facility, each group must ensure that trash is placed in the appropriate receptacles, that restrooms and parking lots are free of litter and unwanted debris, and that the facility is returned to its original condition. Tables must be cleared and decorations removed.

~~4~~J. Should damage to City property occur, the rental applicant is responsible for all direct and indirect costs involving in the repair, replacement or clean-up caused due to the damage.

~~4~~K. \_\_\_\_\_ The City of Milpitas reserves the right to revoke or cancel any permitted use if it is deemed to be dangerous, hazardous or not in the best interest of the City of Milpitas.

~~4~~V.        **DECORATIONS**

~~4~~A. \_\_\_\_\_ No decoration can be stapled, tacked or taped to any amenities (i.e. walls, windows, grounds, flag poles, or ceiling). All decorations must be freestanding and may not be placed in walkways or impede an evacuation creating a tripping hazard in any way. Nothing may be attached or hung from the Community Center Auditorium wiring, sound system or curtains.

~~4~~B. \_\_\_\_\_ All decorations must be flame retardant.

~~4~~C. \_\_\_\_\_ No confetti, birdseed or rice may be thrown in or outside any City facility.

~~4~~D. \_\_\_\_\_ Equipment in the facility may not be altered in any way without the consent of the staff on duty (i.e. moving existing equipment).

~~4~~E. No candles (including birthday cake candles), lanterns, incense or open flames are allowed in any City facility (excluding Sterno).

~~4~~F. Balloons: All balloons must be removed at the end of event or the applicant will be charged a clean-up penalty.

**VI.        FUNDRAISING**  
**Priority II and III**

~~4~~A. \_\_\_\_\_ Groups wishing to use City facilities for fundraising events and/or activities will be charged according to Priority II and Priority III facility use Fee Schedule.

~~4~~B. \_\_\_\_\_ Concessions, other than City operated, will be subject to the approval of the City Manager or authorized representative and must possess a valid City of Milpitas Business License and any other applicable state, county or federal permits. Concessions will be defined as the sale of any food, beverage, souvenir item or service (i.e. face painting). Copies of said permits and licenses must be submitted a minimum of 45 business days in advance of the rental date. Food being sold to the public requires a Health Permit obtainable from the County of Santa Clara's Health Department and must be submitted to the City 30 business days prior to the rental date.

~~4~~C. \_\_\_\_\_ Any person sponsoring, promoting, operating, etc. an entertainment activity (outside), open to the public, charging admission or as described in the Milpitas Municipal Code (Title III, Chapter 5, Entertainment Event) may be required to obtain a Special Event Permit. Permit information and applications are available at the Planning Department, 455 E. Calaveras Blvd., Monday - Friday, 8:00 am - 5:00 pm. If required, the Special Event Permit must be obtained prior to receiving a fully approved rental permit.

## **VII. FACILITY & FIELD RULES & PROCEDURES**

- ~~1~~A. Food and beverages can be served in any non-carpeted room, with exception to the dance studio. Rooms with carpet are not permitted to have food and beverages.
- ~~1~~B. No barbecuing or use of propane stoves is allowed outside or near all City facilities unless in a designated fire pit at the Higuera Adobe Building. At the Higuera Adobe Building, only electric charcoal starters or fluids made for the purpose of igniting charcoal may be used in the fire pit. Starters must be used according to the manufacturers' instructions.
- ~~1~~C. Groups granted use of City facilities and fields shall use them only for such purposes as specified in their facility use permit and shall limit use to the facility requested. Groups using additional facilities will be charged in accordance with the Fee Schedule and such charges may be deducted from the deposit.
- ~~1~~D. Groups may use certain facility and field equipment, provided it is not removed from the premises. Use of equipment must be specified in the Facility Use Application. City approval is required for any removal or change in the location of any stage rigging or other equipment, structures, enclosures or utility connections. All equipment must remain inside all designated facilities (i.e. tables, chairs, etc.).
- ~~1~~E. The Facility Attendant is provided by the City to assist you with equipment/furniture needs and room set up. The attendant is not present in the meeting/party/field site at all times during your event. The attendant is not responsible for supervision of guests, security, law enforcement or conflict resolution. The attendant, if present, is instructed to call 911 if an emergency situation arises. Rental applicant assumes responsibility for these and other unforeseeable possible situations.
- ~~1~~F. Any person, public or private firm, organization or corporation, who rents the facility or field that hosts a ticketed event for live entertainment, shall make an announcement of the availability of emergency exits prior to the beginning of the live entertainment.
- ~~1~~G. The Community Center marquee is to be used for City sponsored activities only. Exceptions must be approved by City Council. To seek an exception, the applicant must submit a written request at least 90 days prior to the proposed date of use. Requests will be reviewed by the City Council at a regularly scheduled City Council meeting.
- ~~1~~H. Facility/Field use shall not be granted:
- ~~1~~a. To any group or individual, political or otherwise that advocates the overthrow of the United States Government or the State of California by force, violence or other unlawful means.
  - ~~1~~b. When, for any reason, such use may not be in the interest of the City and/or community, as determined by the City Manager or authorized representative, whose decision may be appealed to the City Council whose decision shall be final.
- ~~1~~I. Gambling, casino nights or any legal function or activity involving games of chance may be held in a City facility. The activity must, however, be open to the public and admission may not be charged. Donations may be accepted as long as access is not denied if a donation is not received.
- ~~1~~J. The City of Milpitas is not responsible for accidents, injury, illness, or loss of group or individual property. The applicant agrees to indemnify at its own expense, and hold harmless the City, its officers, agents, volunteers, and employees from all costs, expenses, reasonable attorney fees, claims, liabilities or damages to persons or property that may arise during or be caused in any way by such use of occupancy of the facilities of the City of Milpitas. The applicant agrees to reimburse the City of Milpitas for any damage to said facilities occasioned by or growing out of the use herein requested and to abide by the rules and regulations governing such use of. The City

requires insurance coverage for certain types of rentals in accordance with the alcohol and insurance requirement guidelines. In addition, the City may, at its discretion, require user to provide at user's expense such police and/or fire protection as deemed reasonable for the protection and preservation of the public property and peace.

~~4.K.~~\_\_\_\_\_The City Manager or authorized representative, shall have the right to unrestricted access to all facilities at all times during any and all use. Groups found in violation of established City laws and ordinances or constituting a public nuisance may be required to leave the facility. The misuse of facilities, failure to conform to established regulations or other applicable City Ordinances, will be sufficient reason for termination of the function. Permits may not be transferred, assigned or sold.

~~4.L.~~Any group not abiding by all the Facility Use Rules and Regulations will forfeit entire rental deposit and paid rental fees.

### **VIII. SMOKING/VAPING/ALCOHOL**

~~4.A.~~\_\_\_\_\_By City Ordinance, smoking is not permitted in any City facility or within 25 feet of the facility.

~~4.B.~~\_\_\_\_\_Smoking/vaping or alcohol consumption is not permissible in the Milpitas Sports Center gymnasium or on the pool deck.

~~4.C.~~\_\_\_\_\_Serving or selling alcohol must cease one hour prior to the rental end time as stated on the permit.

~~4.D.~~\_\_\_\_\_As a host of the event, if you are serving/selling alcohol, you are responsible and potentially liable for the safety of your guests at the event who are under the influence of alcohol. You should maintain strict control over alcohol service and ensure your guests are able to return safely home after the party. This is not the responsibility of the Facility Attendant.

~~4.E.~~No alcoholic beverages may be served or sold at youth oriented events. The designation of such an activity will be at the discretion of the Director of Recreation and Community Services or authorized representative. Should facility staff witness alcohol being served, consumed on the premises or in the parking lot, the party will be shut down immediately and the entire deposit and rental fees will be forfeited.

~~4.F.~~By City Ordinance, beer or wine is permissible for adults in City park picnic areas unless otherwise posted. California State law expressly forbids alcoholic beverages of any kind at Russell Middle School softball facility under any circumstances, as it is located on school property. Sale of beer, wine or other alcoholic beverages is allowed subject to the above location restrictions and upon approval of the Milpitas Police Department and the acquisition by the user group of a valid permit from the Alcoholic Beverage Control Department located at 100 Paseo de San Antonio, San Jose, CA, 408-277-1200. Alcohol permit is due 30 days in advance of the rental date. Additional insurance is required.

### **IX. PARKS/PICNIC AREA RULES & REGULATIONS**

~~4.A.~~\_\_\_\_\_Reservations for park picnic areas must be made at least three (3) business days in advance.

~~4.B.~~\_\_\_\_\_Park picnic reservations that cannot be held due to inclement weather will be issued a full refund, minus processing fees. The rental applicant is responsible for contacting the Community

Center Office within two (2) business days after the scheduled event to initiate the credit.

~~1.C.~~ Park reservations that are transferred to a new date within 30 days of the reservation will be charged a \$20 Park Reservation Transfer fee and may require management approval.

~~1.D.~~ Park reservation cancellations must be made 30 days prior to the rental date and will receive a credit minus the application and processing fees.

~~1.E.~~ All City of Milpitas Municipal Codes regarding City Parks must be strictly adhered to.

## **X. GYMNASIUM RULES & REGULATIONS**

~~1.A.~~ Gymnasium facilities will only be rented to groups for sporting activities or programs. Requests for non-sports related activities will not be granted. Insurance will be required.

~~1.B.~~ No food or beverages are allowed in the Milpitas Sports Center gymnasium.

~~1.C.~~ Gymnasium participants must wear athletic type shoes. (Hard soles or black soles are not permitted on the gymnasium floor.)

~~1.D.~~ Locker room facilities are not available.

~~1.E.~~ Minors are not allowed inside the facilities without proper adult supervision.

~~1.F.~~ No other type of equipment is allowed inside the gyms without prior consent of the Director of Recreation and Community Services or his/her designee. No equipment other than fixed pieces of equipment are available.

~~1.G.~~ Access is limited to that portion of the facility as agreed upon in the permit. All other areas are restricted.

~~1.H.~~ Recreation and Community Services staff shall be notified immediately of any maintenance problems or concerns, including vandalism and theft.

~~1.I.~~ All garbage must be disposed of properly. Any wet spills must be taken care of promptly and thoroughly.

~~1.J.~~ The facility should be left in the condition in which it was found.

~~1.K.~~ Total gym capacity is not to exceed 600. Bleacher capacity is not to exceed 305 seated spectators.

~~1.L.~~ Use of the scoreboard is NOT included in the established hourly rental fee. The scoreboard must be operated by Recreation and Community Services staff, no exceptions. User groups wishing to use the Scoreboard must put in the request with Recreation and Community Services staff at least 30 days in advance. Additional staffing fee will apply.

## **XI. POOL RULES & REGULATIONS**

- ~~1~~A. \_\_\_\_\_ Smoking/vaping or alcohol consumption is not allowed in the aquatics facility.
- ~~1~~B. \_\_\_\_\_ All pool users and patrons must wear appropriate swim attire. No jeans, cut-off shorts, leotards or any other extra articles of clothing are allowed (CA. Health Code #65838).
- ~~1~~C. \_\_\_\_\_ Youth Locker Rooms are available for shower and changing use.
- ~~1~~D. \_\_\_\_\_ No personal floatation devices, no floatation devices attached to the swim suits or inflatable pool toys of any kind allowed.
- ~~1~~E. No diving allowed.
- ~~1~~F. No running allowed. Please walk at all times.
- ~~1~~G. \_\_\_\_\_ All children under 7 years of age swimming in the yard or meter pool must have an adult attendant in the water with them at all times.
- ~~1~~H. \_\_\_\_\_ Changing on the Pool Deck is NOT allowed. All parents must change their children in the Youth Locker Rooms or Family Changing Room.
- ~~1~~I. No food or drink is allowed on the pool deck, except in the designated areas. Glass containers are not allowed.

Lifts are available for individuals with disabilities. Please contact Recreation and Community Services staff at (408) 586-3225 if assistance is needed with utilizing accessible equipment.

## **XII. SPORTS CENTER ARTIFICIAL TURF FIELDS RULES & REGULATIONS**

- ~~1~~A. \_\_\_\_\_ An approved rental permit is required to use the turf fields.
- ~~1~~B. \_\_\_\_\_ Food and beverages, including gym, seeds, nuts, candy or sports drinks are prohibited. Water only. Glass bottles or containers are prohibited.
- ~~1~~C. \_\_\_\_\_ Any cleats that are used must be rubber; no metal spikes.
- ~~1~~D. \_\_\_\_\_ Chairs, umbrellas, tents, flags and other outdoor furniture are not allowed on the field.
- ~~1~~E. Spectator seating is only allowed in designated areas off of the field.
- ~~1~~F. No driving of stakes.
- ~~1~~G. \_\_\_\_\_ Lining or marking of the field is not allowed without prior written approval from the City.
- ~~1~~H. \_\_\_\_\_ Smoking and tobacco products are prohibited.
- ~~1~~I. Dogs and pets of any kind are prohibited on the synthetic turf.
- ~~1~~J. Barbecues are prohibited.
- ~~1~~K. \_\_\_\_\_ Bikes, roller blades, skateboards, strollers, motorized vehicles and high-heeled shoes are prohibited.
- ~~1~~L. Training drills & devices:

- 4.M. To insure optimum performance of the turf fields, we recommend that repetitive training drills and activities be rotated to prevent continuous wear at a single location.
- 4.N. Training devices should be used with caution. Sleds and various training devices should be used off the main field of play, such as D zones, end zones (if no inlaid logos appear) and areas away from the main boundaries of play where the panels run parallel to the field and no inlaid markings appear.
- 4.O. Tire flipping is not allowed.
- 4.P. Remove training devices from the field after each use.
- 4.Q. Lining or marking of turf *with* prior written approval from the City of Milpitas: Before beginning to paint on your field, consult with the Sports Center Recreation Supervisor for guidance on specific types of paint to use, recommended suppliers, machines and proper PSI machine settings.

### **XIII. PUBLIC BASKETBALL COURT RULES**

- 4.A. Basketball Court hours are dawn-dusk daily.
- 4.B. Basketball Courts are for recreational purposes and are available on a drop-in basis. Courts should be used in two-hour increments and must be forfeited if another group/individual is waiting.
- 4.C. Amplified music including car and portable radios are prohibited.
- 4.D. The Milpitas Police Department may stop basketball play based on complaints.

### **XIV. TENNIS COURT RULES & ETIQUETTE**

- 4.A. City-Sponsored Programs have first priority on tennis courts at all times.
- 4.B. Court Time Limit: Courts must be relinquished to players waiting after one hour of play for singles or 1 hour 30 minutes for doubles.
- 4.C. Waiting Players should state their intent of play to current occupants upon arrival.
- 4.D. Maximum of four (4) players per court.
- 4.E. No single player may use the court when others are waiting.
- 4.F. Tennis courts are for tennis and pickleball only. No other sports or games should be played on the courts. Absolutely no roller skates, roller blades, skateboards and bikes are allowed.
- 4.G. Food, glass objects or alcoholic beverages are NOT allowed on the courts. All food and drinks must be left outside the tennis court fence.
- 4.H. Smooth soled tennis shoes only. No knobby, blacked soled, sports cleats (baseball, soccer, football) or street shoes.

~~4~~I. No instructional aids allowed (i.e ball machines, etc.) unless prior approval has been received from the Director of Recreation and Community Services or authorized representative.

~~4~~J. Conducting any business or concession within any City Park is prohibited except by permit MMC 1-9-4.01 (i.e. private tennis lessons, selling food or beverages, etc.) and appropriate licenses or permits are required.

~~4~~K. \_\_\_\_\_ Smoking is prohibited within 25 feet of tennis courts.

#### **XV. POLICE DEPARTMENT COMMUNITY ROOM**

**For rental of these facilities, please contact the Police Department at (408) 586-2400.**

~~4~~A. \_\_\_\_\_ Rental hours are 8:00 am to 11:00 pm.

~~4~~B. \_\_\_\_\_ Use of the facility shall be primarily for resident groups or individuals. Non-resident group or non-resident individual use will not be permitted.

~~4~~C. \_\_\_\_\_ No alcohol is permitted in the facility.

~~4~~D. \_\_\_\_\_ No parties may be scheduled in the facility.

~~4~~E. Exceptions to any policy or regulation are subject to the approval of the Chief of Police or authorized representative. The applicant must submit exception requests in writing. Decisions of the Chief of Police or authorized representative may be appealed to the City Manager and if not satisfied, to the City Council, whose decision shall be final.

#### **XVI. CITY HALL BUILDING, PLAZA AND GROUNDS**

**For rental of these facilities, please contact the City Clerk's Office at (408) 586-3001.**

~~4~~A. \_\_\_\_\_ No food is allowed in Council Chambers.

~~4~~B. \_\_\_\_\_ No tents or structures are allowed on the grass.

~~4~~C. \_\_\_\_\_ Chairs and tables are available on a first come, first serve basis, and due to the amount of rentals at the facility, may not be available for use. Should this occur, it is the rental applicant's responsibility to provide their own tables and chairs. Please Note: Samples of chairs and tables must be approved 45 days prior to the event.

~~4~~D. \_\_\_\_\_ Access to the parking garage is restricted.

~~4~~E. Flag ceremonies in the Plaza Area are limited to ground ceremonies only and require prior City Council approval.

~~4~~F. All facility rentals require staffing. The number of staff (Maintenance and Information Services) is to be determined by the City Manager or authorized representative on a per event basis.

- ~~4.G.~~ All City Hall Buildings, Plaza and Ground permits are subject to Chapter 100, Title I of the Milpitas Municipal Code and all uses must be approved by the City Manager.
- ~~4.H.~~ No political fundraising is allowed at the City Hall Building, Plaza, and Grounds.
- ~~4.I.~~ No amplified or “live” music is allowed in the rentable outdoor facilities due to the disruption of the surrounding facilities.
- ~~4.J.~~ City Council Chamber dais is not available for use.
- ~~4.K.~~ Use of alcohol is permissible upon approval of the City Manager or authorized representative.

## ADDENDUM 1 SPECIAL EVENT RULES AND REGULATIONS EQUIPMENT RENTAL

### **I. CITY SPONSORED SPECIAL EVENTS**

1.0 The purpose of City Sponsored Special Events is to provide the public with activities to attend within the community. Planning for each event takes place one (1) year prior to the event. These rules and regulations pertain to non-City group participation and use of City equipment for and during City sponsored, co-sponsored, public, and non-profit events.

1.1 Calendar of Events (dates and events are subject to change without notice)

Commissioner’s Recognition	April
Memorial Day Ceremony	May
Summer Concert Series	Summer Season
Movie Night Out	Varies
4 <sup>th</sup> of July Festival	July
Hot August Bites	August
Halloween Event	October
Veterans Day Ceremony	November
Tree Lighting Ceremony	December
Cultural Arts Grants	Throughout the year

### **II. SPECIAL EVENTS**

2.0 All Special Event requests should be directed to the Director of Recreation and Community Services.

2.1 The rental applicant is required to submit a Special Event/Activity Application to the Planning Department along with their approved Recreation Services Rental Application and Permit.

2.2 All outdoor equipment (i.e. bleachers, picnic tables, barbeque pits, etc.) are not moveable and shall remain in their designated locations.

- 2.3 Additional equipment (i.e. bounce houses, chairs, additional seating, staging/platforms, etc.) must be noted on the application and pre-approved by Recreation and Community Services staff. All additional event features must be obtained independently by the rental applicant, including rental costs, fees, insurance and delivery.
- 2.6 All Recreation and Community Services equipment requests should be directed to the Director of Recreation and Community Services and should be made at least 6 months in advance of the requested rental date. Equipment use is subject to availability and approval.

**ADDENDUM 2**  
**YOUTH SPORT PRIORITY OUTDOOR SPORTS FIELD PRIORITIES**  
**ALLOCATION AND PROCESS**

**A-I.** Tiered Structure

~~A.1.~~ Tier 1: All programs administered or sponsored by the City of Milpitas Recreation and Community Services.

~~B.2.~~ Tier 2: Youth and sanctioned organizations and/or groups comprised of 51% Milpitas residents.

~~C.3.~~ Tier 3: Organizations and/or groups comprised of less than 51% Milpitas residents.

~~A.i.~~ Required to pay full rental fees.

**B-II.** Specifications

~~a.1.~~ The City will give field allocation priority to the sport in season.

~~b.2.~~ The City will allocate fields according to age groups appropriate for field usage.

i. Age appropriateness of the fields will be predetermined by the City

~~c.3.~~ The percentage of Milpitas residents will be determined by the average of the previous 3 year's season rosters.

~~d.4.~~ Recreation Services will predetermine a calendar, per season, that will show a breakdown of field maintenance and available fields/times.

~~e.5.~~ Recreation Services will administer the Youth Sport User Group Fee of \$10/player per season, per sport.

i. Rosters will be required mid season so that the youth groups can be invoiced.

ii. Fees must be paid in full prior to new field allocations being approved.

- ~~f.6.~~ For regular season play, it is required that a Milpitas based team be playing on the allocated fields.
- i. This does not apply for tournament play.

~~C.III.~~ Locking Policy

- ~~i.1.~~ Our fields will be locked when they are not allocated or rented. This will assist in keeping our natural turf fields in playable condition,

**ADDENDUM 3  
YOUTH SPORT INDOOR FACILITY PRIORITIES  
ALLOCATION AND PROCESS**

~~1.I.~~ Priorities

1. **Tier 1:** All programs administered or sponsored by the City of Milpitas.
- ~~1.2.~~ **Tier 2:** Youth and sanctioned organizations and/or groups comprised of 51% Milpitas residents.
- ~~1.3.~~ **Tier 3:** Youth organizations and/or groups comprised of less than 51% Milpitas residents.

~~1.II.~~ Allocation Process

1. Priority will be assigned as follows:
- ~~1.i.~~ First application/Initial Allocation
- ~~1.a.~~ Based on rosters from prior 3 quarters
- ~~1.b.~~ If no rosters are available, Tier 3 will be assigned
- ~~1.ii.~~ Tiers may be reassigned with a review of rosters from 3 prior consecutive quarters
- ~~1.a.~~ Please note that due to the high demand and limited availability, should multiple groups request the same dates and times, a lottery system will be utilized to determine allocation.
- ~~1.2.~~ The Indoor Sport Facility will be allocated on a quarterly basis. Applications must be submitted by the 1<sup>st</sup> of the month prior to the start of the quarter.
- ~~1.i.~~ January – March: application due December 1
- ~~1.ii.~~ April – June: application due March 1
- ~~1.iii.~~ July – September: application due June 1
- ~~1.iv.~~ October – December: application due September 1

~~1.III.~~ Specifications

1. The City will give Indoor Sport Facility priority to the sport in season.
- ~~1.2.~~ Priority will be assigned according to the percentage of residents based on rosters from 3 quarters.
- ~~1.3.~~ Recreation Services will administer the Youth Sports User Group Fee of \$15 per player, per quarter, per sport.
  - ~~1.i.~~ Rosters will be required mid quarter so that the youth groups can be invoiced.
    - ~~1.a.~~ Fees must be paid in full prior to new Indoor Sport Facility allocations being approved.
  - ~~1.ii.~~ A refundable deposit of \$500 will be due upon application approval.
    - ~~1.a.~~ For additional information and guidelines on rental deposits please refer to the Facility Manual.

#### **1.IV. Leagues**

If you run games or league play, a team from your organization must be playing. This does not apply to tournaments.

#### **1.V. Tournaments**

The Indoor Sport Facility Allocation Process does not include requests for tournaments. Tournament requests should be submitted as a private rental.

## **CITY OF MILPITAS FACILITY & PARKS ALCOHOL AND INSURANCE REQUIREMENT GUIDELINES FOR RENTAL GROUPS**

The table below summarizes the Insurance and Alcohol Permit requirements by rental type for facilities and parks rentals.

<b>RENTAL TYPE</b>	<b>FACILITY</b>	<b>PARK</b>
Private use/meeting No alcohol	No insurance required	No insurance required
Private Party – no alcohol	No insurance required	No insurance required
Party or meeting serving alcohol	<ol style="list-style-type: none"> <li>1. Purchase Special Events Liability Insurance <b>and</b></li> <li>2. Purchase Liquor Legal Liability Coverage</li> <li><b>Or</b></li> <li>3. Provide Certificate of Insurance with endorsement to the City w/Liquor Legal Liability Coverage</li> </ol>	No insurance required
Public Attended Event (Please refer to the type of events that require insurance and hazard classification)	<ol style="list-style-type: none"> <li>1. Purchase Special Events Liability Insurance</li> <li><b>Or</b></li> <li>2. Provide Certificate of Insurance with</li> </ol>	<ol style="list-style-type: none"> <li>1. Purchase Special Events Liability Insurance</li> <li><b>Or</b></li> <li>2. Provide Certificate of Insurance with</li> </ol>

	endorsement	endorsement
Sell Alcohol	<ol style="list-style-type: none"> <li>1. Purchase Special Events Liability Insurance <b>and</b></li> <li>2. Purchase Liquor Legal Liability Coverage</li> </ol> <p style="text-align: center;"><b>Or</b></p> <ol style="list-style-type: none"> <li>3. Provide Certificate of Insurance with endorsement to the City w/Liquor Legal Liability Coverage</li> </ol> <p style="text-align: center;"><b>And</b></p> <ol style="list-style-type: none"> <li>4. Obtain Alcohol Permit</li> </ol>	<ol style="list-style-type: none"> <li>1. Purchase Special Events Liability Insurance <b>and</b></li> <li>2. Purchase Liquor Legal Liability Coverage</li> </ol> <p style="text-align: center;"><b>Or</b></p> <ol style="list-style-type: none"> <li>3. Provide Certificate of Insurance with endorsement to the City w/Liquor Legal Liability Coverage</li> </ol> <p style="text-align: center;"><b>And</b></p> <ol style="list-style-type: none"> <li>4. Obtain Alcohol Permit</li> </ol>

The rental applicant, which opts to provide a certificate of insurance, must satisfy the minimum insurance requirement of \$2,000,000 general liability per occurrence and general aggregate. The insurance coverage must be endorsed to provide primary coverage and must name the City, its officers, agents, volunteers, and its employees as additionally insured.

The rental applicant must provide the certificate of insurance **30 days** prior to the rental date.

Please note: this information is subject to change without prior notice.



## Milpitas City Council Facility Use Request Form Fiscal Year 2019-20

**City Councilmember Name:** \_\_\_\_\_

**Program/Event Description:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Community Partners (if applicable):** \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_

**I will be seeking sponsors (circle one):** Yes      No

**Estimated Attendance:** \_\_\_\_\_ (youth) \_\_\_\_\_ (adult)

**Preferred Facility:** First Choice: \_\_\_\_\_ Second Choice: \_\_\_\_\_

**Program/Event Date Request:**

Date First Choice: \_\_\_\_\_ Program/Event Hours: \_\_\_\_\_ - \_\_\_\_\_

Date Second Choice: \_\_\_\_\_ Program/Event Hours: \_\_\_\_\_ - \_\_\_\_\_

**Additional City Resources Needed:** (circle all that apply)      *Funding*      *City Staff*      *Marketing*  
Explanation: \_\_\_\_\_

**This event is not campaign related because:** \_\_\_\_\_

\_\_\_\_\_

**Intended Public Purpose Statement:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Councilmember Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	Provide direction to staff on draft Council policies for training and events
<b>Category:</b>	Leadership and Support Services
<b>Meeting Date:</b>	11/5/2019
<b>Staff Contact:</b>	Christopher Diaz, City Attorney, (408) 586-3040 Ashwini Kantak, Assistant City Manager, (408) 586-3053
<b>Recommendation:</b>	Provide direction to staff on draft Council policies for training and events

### **Background:**

The City recognizes the importance of attending conferences and trainings to ensure members of the Council stay informed about best practices in local government and are able to represent the City at the local, regional, and national level. The purpose of the proposed Council policy for training is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for attending conferences and trainings. The Approved Fiscal Year 2019-2020 Budget includes funding of \$5,000 each for training for members of the City Council.

During the Fiscal Year 2019-2020 Budget development process, the City Council expressed an interest in individual Councilmembers having the ability and funding to host events that benefit the City and the Milpitas community, and to use City facilities for this purpose. The use of City facilities is governed by the Milpitas Facility Use Manual and updates to this Manual are being brought forward for Council consideration to enable use of City facilities by individual Councilmembers.

The proposed Council policy for events establishes City policy, guidelines and conditions for the use of funds appropriated to individual members of the City Council for hosting events, donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

### **Analysis:**

#### **Policy for Training**

The proposed draft Council policy for training includes training objectives; general conditions of the policy, including which training the policy applies to; responsibilities of the Councilmembers and the City Manager to ensure appropriate use of the training budget; and procedures for reimbursement of expenses.

#### **Policy for Events**

The Approved Fiscal Year 2019-2020 Budget includes funding in the amount of \$25,000 for the City Council to make donations to intergovernmental agencies and non-profit organizations and to approve fee waivers for events and for individual Councilmembers to either host his/her own events or to donate to additional events and provide fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07.

Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration. Based on historical information about Council donations

fee waivers, staff is recommending setting aside a budget of \$10,000 for the full City Council and \$3,000 each for every individual member of the City Council.

The proposed policy outlines general conditions as described below:

Any events hosted or sponsored by an individual Councilmember shall be for a wide-reaching public purpose serving the Milpitas community at-large, and shall support the priorities of the full Council. Events shall be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events shall not be related to a campaign event. To ensure the integrity of the events, no hosted events shall take place in the six months preceding a municipal election.

The proposed policy provides guidance about type of staff support and number of staff hours. The proposed policy also describes the responsibilities of the City Councilmembers and the City Manager and outlines the procedures for reimbursement of expenses.

Key items for Council consideration and input:

1. Allocation amounts from the total \$25,000 budget for the full City Council and individual Councilmembers.
2. Eligible expenditures for individual Councilmember funds.
3. Number of events hosted by individual Councilmembers.
4. Use of City facilities.
5. Timeframe of events hosted by individual Councilmembers with respect to municipal elections.
6. Amount of staff support hours per event and cumulative number of hours for events hosted by each Councilmember.
7. Approval Process.

#### Next Steps

Based on Council feedback, staff will bring forward both policies for adoption in late summer/early fall 2019.

#### Fiscal Impact

No additional funding is needed at this time. There may be some future fiscal impact depending on direction from the City Council about number of events and the amount of staff support time.

#### Recommendation:

Provide direction to staff on draft Council policies for training and events.

#### Attachment

Draft Council Policy for Training

Draft Council Policy for Events

## CITY OF MILPITAS, CALIFORNIA

### SUBJECT: COUNCIL TRAINING POLICY

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#### PURPOSE OF THE POLICY

The purpose of this policy is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for attending conferences and trainings. The City Council recognizes the importance of attending conferences and trainings to ensure members of the Council stay informed about best practices in local government and are able to represent the City at the local, regional, and national level.

#### TRAINING OBJECTIVES

- To promote regionalism and ensure that Milpitas' interests are represented at the regional, state, and national levels and receive recognition for Milpitas' contributions and accomplishments.
- To ensure that the Council is informed about best practices in local government
- To advocate for the City's interests in the state and federal legislature and with regional agencies

#### PROCEDURES

##### A. General Conditions

1. Training may be a class, seminar, workshop, or conference related to the Mayor and Councilmembers' duties except for duties on other regional boards.
2. All travel to attend conferences or training, which is not directly connected to their Council or regional representative role, must be approved by the City Council during budget adoption or at a subsequent Council meeting.
3. All travel for a class, seminar, workshop, or conference shall be limited to the actual days of the event or immediately after the event and a Councilmember shall not extend their travels for personal pleasure unless fully paid for by the Councilmember.

##### B. Responsibility of the Councilmember

1. Each Councilmember, with the assistance of staff, must complete the Travel and Expense Request Form prior to submitting the form to the Finance Department for processing. All travel for the Council has to be approved by the full Council.
2. A copy of the registration material must be submitted with the Travel and Expense Request Form. The travel approval by the City Council during the budget process or a copy of the Council minutes approving subsequent requests must also be attached with the form.
3. Each Councilmember is expected to provide a brief verbal or written report, within 30 days of the training, to the full Council on the benefits and outcome of the conference or training.

##### C. Responsibility of the City Manager

It is the City Manager's responsibility to review the training budget and travel requests during the budget process. The City Manager will provide a travel schedule for individual Councilmembers, to the extent known, to the City Council for its review and approval during the budget process. The City Manager shall track the training budget for the Mayor and each Councilmember throughout the year and provide regular updates to them.

D. Expense Reimbursement

Travel and training expense reimbursements are subject to the procedures and guidelines established under SOP No. 6-1, Travel and Expense Policy and SOP No. 6-2, Use of City Vehicles Policy.

xxx

## CITY OF MILPITAS, CALIFORNIA

### SUBJECT: COUNCIL POLICY FOR EVENTS

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#### PURPOSE OF THE POLICY

The purpose of this policy is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for hosting or donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. This policy addresses the desire of the City Council for individual Councilmembers to be able to host events that benefit the City and the Milpitas community. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

#### PROCEDURES

##### A. General Conditions

1. The City Council has an approved budget for donations and fee waivers for intergovernmental agencies or non-profit organizations that provide Milpitas community benefit. In addition to this, each individual Councilmember shall have an approved budget for either hosting his/her own events or for donating to additional events and providing fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07. Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration.
2. Guidelines for the use of City facilities for a Councilmember hosted or sponsored program or event are outlined in the City of Milpitas Facility Use Manual (Indoor and Outdoor Facilities).
3. Any events hosted or sponsored by an individual Councilmember shall be for a wide-reaching public purpose serving the Milpitas community at-large, and shall support the priorities of the full Council. Events shall be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events shall not be related to a campaign event. To ensure the integrity of the events, no hosted events shall take place in the six months preceding a municipal election.
4. Staff support for any individual Councilmember hosted events shall be limited to **x** hours, including staff time needed for facility use, unless approved by the full Council. The level of staff support, excluding general facility attendant staff, will be identified and assigned by the City Manager or his/her designee.
5. The approved budget may be used for facility rentals within the City of Milpitas, refreshments, contractual services, and supplies but cannot be used to provide gifts to event participants or to serve alcohol.

B. Responsibility of the Councilmember

1. Each Councilmember, with the assistance of staff, must complete the Event and Facility Use Request Forms and submit to the City Manager and City Attorney's office for review to ensure compliance with state law, and approval.
2. Event coordination and any purchase of refreshments and supplies for events hosted by individual Councilmembers shall be the responsibility of the individual Councilmember.
3. Each Councilmember shall submit all receipts related to the event within 30 days after the event in order to be reimbursed.
4. Each Councilmember shall provide a brief verbal report to the full Council on the benefits and outcome of the event, including event attendance.

C. Responsibility of the City Manager

It is the City Manager or designee's responsibility to review and track the events budget for each Councilmember and to provide regular updates.

D. Expense Reimbursement

Councilmembers shall submit expense reimbursement requests on Finance Department provided forms with original receipts within 30 days after the event.

xxx



## **CITY OF MILPITAS AGENDA REPORT (AR)**

<b>Item Title:</b>	<b>Approve the Milpitas Arts Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: Tegan McLane, 408-586-3212)</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Tegan McLane, 408-586-3212
<b><u>Recommendation:</u></b>	Approve proposed Arts Commission Fiscal Year 2019-20 Work Plan.

### **Background:**

The Milpitas Arts Commission was established October 17, 2000, with the purpose of advising City Council on matters pertaining to the Arts in Milpitas, as well as to serve as the advisory body for the Public Art Program. The Commission's Fiscal Year 2019-20 Work Plan identifies goals, projects and ongoing tasks that the Commission plans to accomplish in this fiscal year.

At its August 26, 2019 Special Meeting, the Commission discussed and unanimously voted to forward their 2019-2020 Work Plan to the City Council for final approval.

### **Analysis:**

The Arts Commission's Fiscal Year 2019-20 Work Plan aligns with existing programs and recommendations from the recent Performing Arts/ Youth Theatre Study.

Key proposed tasks are:

#### **Milpitas Arts and Culture Grant Program**

1. Promote public awareness to encourage applications.
2. Select four grant recipients.
3. Research reinstatement of cash grants to accompany space grants.

#### **Phantom Art Gallery**

1. Review existing commitments to exhibit work at the Milpitas Community Center and Library.
2. Promote public awareness campaign to encourage visitors to gallery(ies).
3. Review any new artist applications received and recommend scheduling.

#### **Public Art Installations**

1. Complete selection of Higuera Adobe Park public art.
2. Determine specifications for Montague Expressway Pedestrian Over-Crossing public art.
3. Identify at least two additional prospective locations for public art and options for low-cost, non-traditional art.
4. Prioritize and calendar all public art installation locations.
5. Make presentations to local companies illustrating how public art could be used to enhance their properties and promote their businesses.

**City Public Art Collection**

1. Review existing City-owned public art for maintenance and repair needs.
2. Recommend maintenance process for City-owned public art.

**Performing Arts Program**

1. Promote public awareness campaign for Performing Arts.
2. Support at least one new City-initiated Performing Arts opportunity.

**Digital Arts**

1. Research a Milpitas Film Festival to showcase Milpitas filmmakers, and short films about or filmed in Milpitas.

**Fiscal Impact:**

There is no fiscal impact to the Fiscal Year 2019-20 budget associated with any of the items on the Work Plan.

**Recommendation:**

- 1) Receive Arts Commission 2019-2020 Work Plan
- 2) Approve proposed Arts Commission Fiscal Year 2019-20 Work Plan.

**Attachment**

Draft Arts Commission Fiscal Year 2019-20 Work Plan

Arts Commission FY 2019-20 Work Plan

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
Milpitas Arts and Culture Grant Program	Promote public awareness campaign to encourage applications.	Commission, Staff	October 2019
	Select four grant recipients.	Commission, Staff	December 2019
	Research and propose reinstatement of cash grants to accompany space grants.	Commission, Staff	January 2020
Phantom Art Gallery	Review all existing commitments to exhibit work at MCC, Library.	Commission, Staff	October 2019
	Promote public awareness campaign to encourage visitors to Gallery.	Commission, Staff	December 2019
	Review any new artist applications received and recommend scheduling	Commission, Staff	Ongoing
Public Art Installations	Complete selection of Higuera Adobe Park public art.	Commission, Staff, Community	August 2019
	Determine specifications for Montague Expressway Pedestrian Over-Crossing public art.	Commission, Staff, Coordination with VTA	TBD
	Identify at least two additional prospective locations for public art and options for additional low-cost non-traditional art projects.	Commission, Staff	February 2020
	Prioritize and calendar all public art installation locations.	Commission, Staff	February 2020
	Make presentations to local companies illustrating how public art could be used to enhance their properties and promote their businesses.	Commission	Ongoing
City Public Art Collection	Review existing City-owned public art for maintenance, repair needs.	Commission, Staff	February 2020
	Recommend maintenance process for City-owned public art.	Commission, Staff	April 2020

Arts Commission FY 2019-20 Work Plan

Performing Arts Program	Promote public awareness campaign for Performing Arts.	Commission, Staff	December 2019
	Support at least one new Performing Arts opportunity.	Commission, Staff	June 2020
Digital Arts	Research and propose a Milpitas Film Festival to showcase Milpitas filmmakers, and short films about or filmed in Milpitas.	Commission, Staff	February 2020



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve the Library and Education Advisory Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: John Macon, 408-586-3226)</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	John Macon, 408-586-3226
<b><u>Recommendation:</u></b>	Approve proposed Library and Education Advisory Commission Fiscal Year 2019-20 Work Plan.

### **Background:**

The Library and Education Advisory Commission was founded on January 17, 1961 and makes recommendations to the City Council on matters pertaining to the operation of library services and facilities in Milpitas. The Commission's Fiscal Year 2019-20 Work Plan identifies goals, projects and ongoing tasks that the Commission plans to accomplish in this fiscal year.

At its September 16, 2019 meeting, the Commission discussed and unanimously voted to forward their 2019-2020 Work Plan to the City Council for final approval.

### **Analysis:**

The Library and Education Advisory Commission's Fiscal Year 2019-20 Work Plan aligns with existing programs and recommendations from the previous year's Work Plan, plus a few new initiatives.

Key proposed tasks are:

#### **County Commissions Forum**

1. Attend forum and report back.

#### **Special Projects/ Essay Contest**

1. Conduct annual essay contest and/or special literacy event(s).
2. Arrange contest, judging, and awards.

#### **Attend Local CPLA Library Conference**

1. Attend conference to gain continued library knowledge.
2. If possible, seek to host the 2020 CPLA Conference in Milpitas.

#### **National Library Week**

1. Promote National Library Week Citywide via City youth programs, Senior Center, Community Center, general public, etc.

#### **Summer Reading Program**

1. Promote Summer Reading Program Citywide via City youth programs, Senior Center, Community Center, general public, etc.

**Volunteerism**

1. Promote and assist, events, book sales, membership drives, etc.

**City Events**

1. Attend City events and promote literacy and library services.

**Library Donor Program**

1. Review current donor program.

**Fiscal Impact:**

There is no additional fiscal impact to the Fiscal Year 2019-20 budget associated with any of the items on the Work Plan.

**Recommendation:**

- 1) Receive Library and Education Advisory Commission 2019-2020 Work Plan
- 2) Approve proposed Library and Education Advisory Commission Fiscal Year 2019-20 Work Plan.

**Attachment**

Draft Library and Education Advisory Commission Fiscal Year 2019-20 Work Plan

Library and Education Advisory Commission FY 2019-20 Work Plan

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
County Commissions Forum	Attend and report back to City Council	Commission, County Library	February 2020
Essay Contest/Special Projects Subcommittees: ** Dr. Seuss Day Event ** April (Arts, Math, Poetry focus)	Conduct Annual Essay Contest – Arrange, Judging, Awards	Commission, Community Partners, Staff	March-April 2020
Attend Local Library Conference	Commissioners attend local Conference to gain continued library knowledge.	Commission	April 2020
National Library Week	Form subcommittee. Promote program Citywide via City Youth Programs, Sr. Center, general public, etc.	County Library, Commission	April 2020
Summer Reading Program	Promote program Citywide via City Youth Programs, Sr. Center, general public, etc.	Commission, County Library	May-August 2019/20
Volunteerism	Membership drives, book sales, library events, etc.	Commission	September, January, June, 2019/20
City Events	Attend City Events and promote Literacy and Library Services	Commission, Staff	FY 2019-20
Library Donor Program	Form subcommittee. Review Current Donor Program	Commission, Staff	FY 2019-20



## **CITY OF MILPITAS AGENDA REPORT (AR)**

<b>Item Title:</b>	<b>Approve the Senior Advisory Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: John Macon, 408-586-3226)</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	John Macon, 408-586-3226
<b>Recommendation:</b>	Approve proposed Senior Advisory Commission Fiscal Year 2019-20 Work Plan.

### **Background:**

Originally founded as the Senior Advisory Commission on December 14, 1978, this Commission served in advisory capacity to the Parks, Recreation and Cultural Resources Commission. The Commission now advises the City Council on matters pertaining to the senior citizens of Milpitas. The Commission's Fiscal Year 2019-20 Work Plan identifies goals, projects and ongoing tasks that the Commission plans to accomplish in this fiscal year.

At its August 27, 2019 meeting, the Commission discussed and unanimously voted to forward their 2019-2020 Work Plan to the City Council for final approval.

### **Analysis:**

The Senior Advisory Commission's Fiscal Year 2019-20 Work Plan aligns with existing programs and recommendations from the previous year's Work Plan, plus a few new initiatives.

Key proposed tasks are:

#### **Host Annual Open House and Resource Fair Events**

1. Establish events subcommittee.
2. Determine event components and partnerships.
3. Assist staff with marketing and post-event evaluations.

#### **Promote Senior Center Resource Area and Health & Wellbeing Presentations**

1. Establish wellness and resource subcommittee to assist with resource area oversight.
2. Promote "Age-Friendly" kiosk area and health and wellbeing presentations.

#### **Sponsor Senior Center Events and Activities**

1. Sponsor and promote birthday celebrations, dances, holiday events, multi-cultural events, etc.

#### **Support/Participate in "Age-Friendly" Initiatives**

1. Promote and participate in Age-Friendly Initiatives (i.e. Dementia Friends) and Santa Clara County Seniors' Agenda activities.

**Fiscal Impact:**

There is no additional fiscal impact to the Fiscal Year 2019-20 budget associated with any of the items on the Work Plan.

**Recommendation:**

- 1) Receive Senior Advisory Commission 2019-2020 Work Plan
- 2) Approve proposed Senior Advisory Commission Fiscal Year 2019-20 Work Plan.

**Attachment**

Draft Senior Advisory Commission Fiscal Year 2019-20 Work Plan

Senior Advisory Commission FY 2019-20 Work Plan

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
Host Open House Event in January and Resource Fair in May	<p>Establish Seniors Events Subcommittee</p> <p>Determine event components and partnerships. Host event.</p> <p>Assist staff with marketing and post-event evaluation.</p>	Commission, Partners, Staff	<p>January 2020 (Open House)</p> <p>May 2020 (Resource Fair)</p>
Promote the Senior Center Resource Area, "Age-Friendly" kiosk and various health and wellbeing presentations throughout the year	<p>Establish Wellness &amp; Resources Subcommittee (in partnership with Case Manager) to oversee the Resource Area</p> <p>Meet on an ongoing basis to promote "Age-Friendly" kiosk area and health and wellbeing presentations.</p>	Commission, Partners, Staff	Ongoing
Sponsor Senior Center Events and Activities	Sponsor and promote: Birthdays, dances, holiday events, multicultural events, etc.	Commission, Staff	Ongoing
Support/Participate in "Age-Friendly" Initiative(s)	Promote and participate in Age-Friendly initiatives (i.e. Dementia Friends) and Santa Clara County Seniors' Agenda activities	Commission, Partners, Staff	Ongoing



## **CITY OF MILPITAS AGENDA REPORT (AR)**

<b>Item Title:</b>	<b>Approve the Milpitas Community Advisory Commission Work Plan for Fiscal Year 2019-2020 (Staff Contact: Robert Musallam, 408-586-3275)</b>
<b>Category:</b>	Commission Reports
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Robert Musallam, 408-586-3275
<b>Recommendation:</b>	Receive and approve proposed Community Advisory Commission Fiscal Year 2019-2020 Work Plan

### **Background:**

The Milpitas Community Advisory Commission (CAC) was established July 20, 1954, with the purpose of advising City Council on matters affecting Milpitas citizens, especially those relating to community improvement. Additionally, the CAC makes a recommendation to the Council regarding Community Development Block Grant (CDBG) funding. The Commission's Fiscal Year 2019-2020 Work Plan identifies goals, projects and ongoing tasks that the Commission plans to accomplish in this fiscal year.

At its November 6, 2019 meeting, the Commission discussed and voted to forward their 2019-2020 Work Plan to the City Council for final approval.

### **Analysis:**

The Community Advisory Commission's Fiscal Year 2019-2020 Work Plan aligns with existing programs and recommendations from past year's activities.

Key proposed projects are:

**CDBG Allocations**  
**Spring Cleaning Day**  
**National Night Out**  
**Neighborhood Beautification Awards**  
**Promote Affordable Housing and Building Safety Month**

See attached Draft Community Advisory Commission work plan for a detailed list of proposed tasks required by both Commissioners and staff to ensure completion of the projects for fiscal year 2019-2020.

### **Fiscal Impact:**

There is no additional fiscal impact to the Fiscal Year 2019-2020 budget associated with any of the items on the Work Plan.

### **Recommendation:**

Receive and approve proposed Community Advisory Commission Fiscal Year 2019-2020 Work Plan

### **Attachment**

Draft Community Advisory Commission Fiscal Year 2019-2020 Work Plan

# MILPITAS COMMUNITY ADVISORY COMMISSION

## FY 2019-2020 WORK PLAN

Work Plan Goals: Serve as an advisory body on matters affecting Milpitas residents, especially those relating to community improvement.					
Topic/Advisory Area		Tasks	Required Resources	Begin Discussion	Deadline
1.	CDBG public hearing process	<b>Staff</b> 1. Present informational workshop for commissioners 2. Prepare application binders 3. Coordinate with CDBG applicants to attend the meeting 4. Coordinate with CDBG applicants to attend the meeting <b>CAC</b> 1. Decide on a date for Public Hearing 2. Review prepared binders for Public Hearing 3. Make recommendations for CDBG funding to City Council	Time: Commission, Staff, CDBG Applicants  Budget: Dinner, Refreshments	Upon CDBG application close date	Annually- Depending on application window
2.	Spring Cleaning Day	1. Commissioners discuss location for the event 2. Staff coordinates with community organizers to present about logistics for the event and volunteers 3. Staff will coordinate trash receptacles and other necessities for the event	Time: Commission, Staff, Community Organizers  Budget: Outreach materials, refreshments for volunteers, certificates of appreciation for volunteers	January	April
3.	National Night Out	1. Staff coordinates with Milpitas PD to present about National Night Out 2. Commissioners discuss outreach strategies for the event and determine areas to engage	Time: Commission, Staff, Police Department  Budget: Outreach materials, flyer printing	April	August
4.	Neighborhood Beautification Awards	1. Commissioners discuss ways to revamp the program, including the award categories, criteria, application window, and logistics. 2. Code Enforcement publishes application 3. Commissioners conduct community outreach	Time: Commission, Staff  Budget: Award plaques for winners	May	September

		<ol style="list-style-type: none"> <li>4. Subcommittee reviews applicants and votes for winners of each award category</li> <li>5. Staff coordinates the presentation of award winners to the City Council</li> </ol>			
5.	Promote Affordable Housing and Building Safety Month	<ol style="list-style-type: none"> <li>1. Commissioners coordinate with staff to promote Affordable Housing and Building Safety Month</li> <li>2. Commissioners conduct outreach for activities, workshops, and community events</li> </ol>	<p>Time: Commission, Staff</p> <p>Budget: Outreach materials</p>	February	May



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve the Milpitas Planning Commission Work Plan for Fiscal Year 2019-20 (Staff Contact: Ned Thomas, 408-586-3273)</b>
<b>Category:</b>	Commission Reports
<b>Meeting Date:</b>	11/19/2019
<b>Staff Contact:</b>	Ned Thomas, 408-586-3273
<b>Recommendation:</b>	Approve proposed Planning Commission Fiscal Year 2019-20 Work Plan.

### **Background:**

The Milpitas Planning Commission is established under Title 1, Chapter 5, of the Milpitas Municipal Code with the purpose of advising City Council on matters pertaining to land use, development issues, and planning permit decisions. The Commission's Fiscal Year 2019-20 Work Plan identifies long-range planning projects, development review activities, and ongoing training that the Commission plans to accomplish in this fiscal year.

At its October 9, 2019, meeting, the Commission discussed and voted unanimously (7-0) to forward their 2019-20 Work Plan to the City Council for final approval.

### **Analysis:**

The Planning Commission's Fiscal Year 2019-20 Work Plan aligns with the City Council's adopted priorities related to Neighborhoods and Housing, Economic Development and Job Growth, Transportation and Transit, Environment, and Community Wellness and Open Space.

Key tasks/activities are:

Development Review: Conditional Use Permits, Tentative Maps, Zoning Ordinance Amendments, CEQA  
General Plan Conformance Review: CIP, Master Plans  
General Plan Update: Recommendation to the Council  
Specific Plan Update: Recommendation to the Council  
Commissioner Training: Special Meetings, Workshops, Conferences on topics related to land use planning

### **Fiscal Impact:**

Members of the Planning Commission receive a stipend of \$25 per meeting. Estimated total cost for seven commissioners to attend approximately 24 meetings during FY2019-20 is \$4,200. Commission training is estimated at \$500 per Commissioner, or total cost \$3,500. These costs are included in the Planning Department budget for Fiscal Year 2019-20.

### **Recommendation:**

- 1) Receive proposed Planning Commission Fiscal Year 2019-20 Work Plan
- 2) Approve proposed Planning Commission Fiscal Year 2019-20 Work Plan.

### **Attachment**

Draft Planning Commission Fiscal Year 2019-20 Work Plan

**City of Milpitas  
Planning Commission  
Work Plan FY 2019-2020**

<b>Purpose:</b> Advise City Council on issues and policies related to city planning, zoning and land use regulation, and community development; review, consider, discuss, and make recommendations on proposals for new development throughout the City.							
<b>Topic/Activity</b>			<b>Tasks</b>			<b>Required Resources</b>	<b>Completion</b>
Development Review*			Attend meetings (2/month); read meeting packets; active participation; site visits; Take action (approve/deny) or make recommendations to the City Council			Commission, Staff	Ongoing
General Plan Update			Make recommendations to Council on draft policies, EIR, draft General Plan			Commission, Staff, Consultant	June 2020
TASP Update			Participate in meetings; Review draft plan and make recommendations to Council			Commission, Staff, Consultant	Aug. 2020
Midtown Spec. Plan Update			Participate in meetings; Review draft plan and make recommendations to Council			Commission, Staff, Consultant	Dec. 2020
Commissioner Training			Attend special meetings (1/month avg.); attend workshops/conferences as avail.			Commission, Staff, Training Budget	Ongoing

\* The Commission Reviews and Acts Upon the Following:

1. General Plan and General Plan amendments;
2. Specific Plans and Specific Plan amendments;
3. Environmental Impact Reports and Negative Declarations under CEQA;
4. Tentative Subdivision Maps;
5. Planned Development permit applications for development;
6. Subdivision Ordinance exceptions;
7. Zoning and Subdivision Ordinance amendments
8. Conditional Use Permit
9. Special Studies and Reports (e.g., Bike and Ped Master Plan, Open Space Plan, Green Infrastructure Plan, etc.)
10. Appeals of Decisions by the Zoning Administrator.

# **MILPITAS CITY COUNCIL MEETING**

## **PREVIEW OF AGENDA ITEMS**

**DECEMBER 3, 2019**

### **CONSENT CALENDAR**

- 1) Accept City Council calendar for December 2019 (Mary Lavelle)
- 2) Approve City Council meeting minutes of November 12 and 19, 2019 (Mary Lavelle)
- 3) 2<sup>nd</sup> Reading/Adopt Ordinance No. 38.839 Updating Zoning Regs for Massage Establishments (Ned Thomas)
- 4) Adopt a Resolution Approving updated Fees for Massage Establishment Permits (City Attorney, Police)
- 5) Adopt a Resolution of Initial Acceptance of the Silicon Valley VTA BART Extension project (S. Erickson)
- 6) Adopt a Resolution Approving Purchase of Fleet Vehicles (for Police + Public Works) from National Auto Fleet Group (Tony Ndah)
- 7) Receive Annual AB1600 Report of Development Fees (Walter Rossmann)
- 8) Review Report of Sole Source Purchases (Walter Rossmann)
- 9) Authorize City Manager to Sign Agreement with Santa Clara County for UASI Grant Funds (\$2,000) for Fire Dept. (Toni Charlop)
- 10) Accept the Receipt of \$750,000 related to FY 2019 Car Break-In Prevention (Jared Hernandez)

### **PUBLIC HEARINGS**

- 11) Adopt a Resolution Approving Residential Development at 91 Montague Expressway (Michael Fossati)
- 12) Consider Request for Special Event Bingo License 12/31/2019 Milpitas Charity Bingo (Mary Lavelle)
- 13) 2<sup>nd</sup> reading/Adopt updated Fire Code with local amendments Ordinance No. 113.25 (Albert Zamora)
- 14) 2<sup>nd</sup> reading/Adopt updated Building Code with local amendments Ordinance No. 65.147 (Sharon Goei, Bill Tott)
- 15) 2<sup>nd</sup> reading/Adopt Ordinance No. 65.148 Calif. Energy Code local amendments, and Ordinance No. 65.149 Calif. Green Building Standards Codes local amendments (Sharon Goei, Bill Tott)

### **LEADERSHIP**

- 16) Accept FY 2018-19 Consolidated Annual Financial Report and Related Reports (Walter Rossmann)
- 17) Presentation of Pension Actuarial Analysis and Options (Walter Rossmann)
- 18) 1<sup>st</sup> reading/Introduce Ordinance No. \_\_\_ to Update Policy on outstanding utility bills (Walter Rossmann)

### **REPORTS**

From Mayor and Councilmembers on assigned Committees, Commissions and outside bodies

### **COMMISSION REPORTS**

- 19) Approve Economic Development & Trade Commission Work Plan (Alex Andrade)
- 20) Approve Public Safety & Emergency Preparedness Commission Work Plan (Toni Charlop)
- 21) Approve Youth Advisory Commission Work Plan (Rosana Cacao)

### **PREVIEW NEXT AGENDA**

- 22) Preview list of items for December 17, 2019 (Mary Lavelle)